

Aagard, Lori 30(b)(6)

Volume 1 - 01/29/2024

Full Proceeding with Highlighted Clips

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CONFIDENTIAL

Def Counter Designations

Pls' Dep Designations

0001

01: UNITED STATES DISTRICT COURT  
02: WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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03:  
04: DEREK TUCSON, ROBIN SNYDER, )  
MONSIEREE DE CASTRO, and )  
05: ERIK MOYA-DELGADO, )  
 )  
06: Plaintiff, )  
 ) No. 2:23-cv-00017-MJP  
07: v. )  
 )  
08: CITY OF SEATTLE, ALEXANDER )  
PATTON, TRAVIS JORDAN, DYLAN )  
09: NELSON, RYAN KENNARD, MIA )  
NGUYEN, JAMISON MAEHLER, )  
10: NICHOLAS GREGORY, RYAN )  
BARRETT, and MICHELE )  
11: LETIZIA, )  
 )  
12: Defendants. )

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13:  
14: VIDEOTAPED 30 (b)(6) DEPOSITION OF  
15: CITY OF SEATTLE DESIGNEE  
16: LORI AAGARD

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17:  
Monday, January 29, 2024

18:  
Via Zoom, Washington

19:  
20:  
21:  
22:  
23:  
24: STENOGRAPHICALLY REPORTED BY:  
KIM SCHEUERMAN, WA CCR NO. 2517  
25: Kim@lakesidereporting.com

0002

01: A P P E A R A N C E S

02: FOR THE PLAINTIFFS:

03: BRADEN PENCE

MacDONALD HOAGUE & BAYLESS

04: 705 Second Avenue, Suite 1500

Seattle, Washington 98104

05: bradenp@mhb.com

06: ALSO PRESENT: NATHANIEL FLACK

07:

08:

09: FOR THE DEFENDANTS:

10: KERALA COWART

JESSICA LEISER

11: ASSISTANT CITY ATTORNEYS

SEATTLE CITY ATTORNEY'S OFFICE

12: 701 5th Avenue, Suite 2050

Seattle, Washington 98104

13: kerala.cowart@seattle.gov

jessica.leiser@seattle.gov

14:

15: ALSO PRESENT: VLADIMIR KORNEYCHUK

VIDEOGRAPHER

16:

17:

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20:

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0003

01:

I N D E X

02:

EXAMINATIONS

PAGE NO.

03:

BY MR. PENCE

5

04:

05:

E X H I B I T S

06:

EXHIBIT NO. DESCRIPTION

PAGE NO.

07:

EXHIBIT 52 Plaintiffs' Amended Notice of 30

13

(b)(6) Video Deposition

08:

EXHIBIT 53 E-mail dated January 23, 2024

17

09:

EXHIBIT 54 Supplemental Disclosures by the City

34

10:

of Seattle

11:

EXHIBIT 55 Video - Bates PL000581

115

12:

EXHIBIT 56 Video - Bates PL000165

116

13:

14:

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REQUEST FOR INFORMATION

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80, 17

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0004

01: MONDAY, JANUARY 29, 2024; VIA ZOOM, WASHINGTON

02: 12:40 p.m.

03: \*\*\*

04: THE VIDEOGRAPHER: Good afternoon. We are on

05: the record. Today is January 29th, 2024. The time is

06: approximately 12:40 p.m. This is the Zoom remote video

07: deposition of 30 (b)(6) City of Seattle represented by

08: Captain Aagard in the matter of Tucson, et al, versus

09: City of Seattle, et al.

10: Would counsel please give their appearances for the

11: record, after which the reporter will swear in the

12: witness.

13: MR. PENCE: Braden Pence here on behalf of

14: plaintiff -- all plaintiffs, and then Mr. Nathaniel

15: Flack and/or Mr. Neil Fox may be appearing but will not

16: be conducting the deposition today.

17: MS. COWART: Kerala Cowart on behalf of all

18: the defendants, and Jessica Leiser is here as well, my

19: co-counsel.

20:

21: LORI AAGARD,

22: having been sworn/affirmed on oath to tell the truth,

23: the whole truth, and nothing but the truth, testified

24: as follows:

25:

0005

01: E X A M I N A T I O N

02: BY MR. PENCE:

03: Q. All right. Good afternoon, Captain. Would you please

04: let me know how to pronounce your name and then also

05: state and spell it for the record?

06: A. It's Aagard. A-a-g-a-r-d.

07: Q. And then what's an appropriate way to address you -- or

08: respectfully address you today? Captain, Ms., or do

09: you have a preference?

10: A. Captain is fine.

11: Q. So Captain Aagard, you understand you're under oath,

12: correct?

13: A. Correct.

14: Q. And as a result, you understand that you must tell the

15: truth, correct?

16: A. Correct.

17: Q. And you understand you must tell the whole truth,

18: correct?

19: A. Correct.

20: Q. And nothing but the truth, correct?

21: A. Correct.

22: Q. And you are going to do that today; is that right?

23: A. That is correct.

24: Q. You understand that today's testimony here is

25: essentially testimony in front of a jury, that the

0006

01: judge and/or jury may see or hear this testimony?

02: A. Yes. Correct.

03: Q. Do you understand that the judge and jury may -- that

04: this testimony is, therefore, just as important as

05: though we're testifying in trial?

06: A. Yes.

07: Q. And as a result, it's very important that you give

08: truthful, complete, and accurate testimony today. Do

09: you understand that?

10: A. Yes.

11: Q. And you intend to do that; is that right?

12: A. That's right.

13: Q. If I ever ask you a question that you don't understand,

14: you need to let me know. Because if you answer a

15: question without letting me know that you don't

16: understand it, I'm going to assume that you understand

17: it. Does that make sense?

18: A. Yes.

19: Q. That way, if you let me know that there's a need for

20: clarification, we can ensure that your testimony is

21: accurate and complete; is that right?

22: A. Yes.

23: Q. If you ever want to take back an answer or add to an

24: answer or change an answer in any way, you need to let

25: me know that. Okay?

0007

01: A. Okay.

02: Q. It's important that you do that as soon as possible. I

03: will allow you to make a change to your testimony if

04: you need to, okay?

05: A. Okay.

06: Q. Of course the intention of that is so that we get

07: truthful, accurate, and complete testimony today. Do

08: you understand that?

09: A. Yes.

10: Q. If you do make changes to your testimony, however, I

11: will be allowed to make arguments regarding the reason

12: why you changed testimony. Do you understand that?

13: A. Yes.

14: Q. All right. And you understand there's a court reporter

15: writing down everything that you're saying and a

16: videographer recording everything that we're all

17: saying. Do you understand that?

18: A. Yes, I do.

19: Q. Therefore, we need to have verbal answers because

20: uh-huh or huh-uh isn't clear in terms of what the court

21: reporter is writing down. Does that make sense?

22: A. Yes.

23: Q. And the same goes for shaking your head or nodding your

24: head; we'll need verbal answers. Okay?

25: A. Okay.



0008

01: Q. So the court reporter is going to make a transcript of  
02: your testimony today; you will have the opportunity to  
03: review that transcript and make any changes that are  
04: necessary. Do you understand that?

05: A. Yes.

06: Q. If you do make those changes, however, I will be  
07: allowed to argue that -- about the reasons why you  
08: changed the testimony. Do you understand that?

09: A. Yes.

10: MS. COWART: Braden, this is getting a little  
11: repetitive and bordering on argumentative.

12: MR. PENCE: Ms. Cowart, you can make form  
13: objections if you wish. I can use my time how I wish.  
14: I would prefer for us all to use our time efficiently,  
15: which would include avoiding unnecessary speaking  
16: objections.

17: Q. (By Mr. Pence) So Ms. Aagard, regarding breaks, we're  
18: going to be taking breaks during today's testimony.  
19: But I only have a certain number of hours today, so if  
20: you need a break, will you please let me know?

21: A. Yes.

22: Q. All right. And I will allow you to take that break if  
23: you need one. Okay?

24: A. Okay.

25: Q. Is there any reason, medical or otherwise, why you will

0009

01: not be able to give truthful, accurate, and complete

02: testimony today?

03: A. No.

04: Q. If that ever changes during the course of the

05: deposition, you need to let me know immediately. Is

06: that fair?

07: A. Yes.

08: Q. Do you understand that the City has designated you as a

09: CR 30 (b)(6) witness?

D's Obj: 401, 402 (court can  
instruct on what this  
means)

10: A. Yes.

11: Q. Do you understand what that means?

Pl's resp.: relevant to  
establish foundation and  
binding nature of later  
testimony.

12: A. Yes.

13: Q. Do you understand that as a 30 (b)(6) witness, you are

14: responsible for testifying for the City itself?

15: A. Yes.

16: Q. Do you understand that you are charged with having

17: knowledge -- all knowledge available to the City on the

18: designated topics?

19: A. Yes.

20: Q. Do you understand that you are charged with testifying

21: about the City's subjective beliefs and opinions on the

22: designated topic?

23: A. Yes.

24: Q. And do you agree to testify for the City in that

25: capacity?

0010

01: A. Yes.

02: Q. Do you agree that your testimony will bind the City at  
03: trial?

04: A. Yes.

05: Q. You may also be asked for your personal knowledge or  
06: information or opinions. Unless I specifically ask for  
07: your personal opinion or knowledge, understand that I  
08: am asking for the City's information, knowledge, or  
09: opinion. Do you understand that?

10: A. Yes.

11: Q. And so unless I specify otherwise, you are testifying  
12: as a City's designee and not in your personal capacity.  
13: Do you understand that?

14: A. Yes.

15: MR. PENCE: Okay. Regarding objections as to  
16: the scope of the topic, I think it's a poor use of our  
17: time for counsel and I to quibble back and forth about  
18: the scope of the topic. You can make an objection  
19: regarding scope; we can address that with the Court  
20: regarding whether or not it's admissible down the road.  
21: But so I'm going to ask that the objections be limited  
22: to scope of the topic of objection.

23: MS. COWART: I mean, I'll also object to  
24: things like vague, compound, but yes, I will make  
25: objections if it's beyond the scope.

0011

01: MR. PENCE: All right. I'm not asking you to  
02: limit other objections. I'm just simply saying  
03: regarding the scope that we not get into protracted  
04: discussions about that.

05: MS. COWART: Agree.

06: Q. (By Mr. Pence) So Captain Aagard, what is your  
07: educational background?

08: A. I have a BA from the UW.

09: Q. What year did you get that BA?

10: A. 1986.

11: Q. Any other formal education past high school?

12: A. No.

13: Q. Work history prior to coming to work for the City of  
14: Seattle Police Department, could you please give me a  
15: brief summary of the jobs you held prior to SPD?

16: A. SPD was the first job I had out of college, so it was  
17: during high school I worked at Taco Time and a cannery.

18: Q. When were you hired by Seattle Police Department?

19: A. 1986.

20: Q. And you've been with SPD since then?

21: A. No.

22: Q. Where -- what other places did you work during that  
23: period of time?

24: A. In 1991, I resigned to stay home with children for 13  
25: years and I came back in 2004.

0012

01: Q. Other than that period of time when you were not with

02: SPD or any other employers since 1986?

03: A. I coached at high schools and -- high schools as a

04: tennis coach and a basketball coach.

05: Q. Anything besides that?

06: A. No.

07: Q. What is your rank as of January 1st, 2020, through

08: present?

09: A. Can you repeat that?

10: Q. Yeah. As of 2020, January 1st, 2020, what was your

11: rank?

12: A. 2020, I was a lieutenant.

13: Q. And when did you get promoted to captain?

14: A. It was October of 2021.

15: Q. And what were your duties as a lieutenant between the

16: end of May 2020 and January of 2021?

17: A. I was -- let's see, 2020, I had two -- I was operations

18: lieutenant at the south precinct, and then I was also

19: the training lieutenant for our field training

20: operations.

21: Q. You've been designated to testify regarding Topic 1,

22: which we'll talk about in just a second. I'm wondering

23: if you can give me a brief summary of why in your

24: personal capacity as an officer what sort of

25: experiences or training you would have that would give

0013

01:           you exposure to Topic 1?

02:           A. I don't have Topic 1 in front of me.

03:           Q. All right. Well, let me bring that up for you. And

04:           before we move on, where are you currently located?

05:           A. Columbia Center downtown.

06:           Q. All right. Who else is in the room with you besides

07:           Ms. Cowart?

08:           A. Nobody.

09:           Q. Do you have any documents in front of you?

10:           A. No.

11:                       MR. PENCE: I'm going to share my screen and

12:           show you. Ma'am court reporter, will you let me know,

13:           are we on 52? Don't know. I'm going to say 52, it's

14:           my understanding.

15:                       (Exhibit 52 marked for identification.)

16:           Q. (By Mr. Pence) What do you see on the screen? Do you

17:           see a document entitled Plaintiffs' Amended Notice of

18:           30 (B)(6) Deposition?

19:           A. Yes.

20:           Q. Have you seen this document before?

21:           A. Yes.

22:           Q. All right. It's dated January 25th, 2024, signed by

23:           myself and my co-counsel. This is the notice that

24:           prompted today's deposition. In fact, we have given

25:           this language to the City's counsel in December. There

0014

01: was an earlier notice, but this is the most recent  
02: iteration of it testifying via video-recorded  
03: deposition.

04: So Topic 1, my understanding is you're here to  
05: testify regarding Topic 1. So when I say Topic 1, I'm  
06: referring to -- there's two topics, one here and one  
07: below.

08: You're here for this one that says "SPD's decision  
09: making with respect to which individuals were arrested  
10: and transported to King County Jail for booking during  
11: large crowd events in 2020 and how King County Jail's  
12: booking restrictions affected SPD's decision making."

13: Do you see that language?

14: A. I do.

15: Q. Have you seen that language before just now?

16: A. Yes.

17: Q. Do you understand that's the topic you're here to  
18: testify about?

19: A. Yes.

20: Q. Okay. So what -- stopping the share there -- what --  
21: what -- what experience or training do you have in your  
22: job as a lieutenant and now captain would give you  
23: information about Topic 1?

24: A. Years of patrol experience on the street, dealing with  
25: arrests, and then many -- working many of the

0015

01: demonstrations as the prisoner processing lieutenant.

02: Q. What -- tell me about the prisoner processing

03: lieutenant. What does that person do?

04: A. That person is in charge of the prisoner processing

05: team and the vans that go out and pick up and do the

06: arrest screenings of the people that we arrest.

07: Q. Does the prisoner processing lieutenant have

08: information regarding what the rules of engagement are

09: for any given protest; for example, if there are

10: certain crimes that SPD will be focusing on or

11: disregarding, would that sort of information be

12: available to the prisoner processing lieutenant?

13: A. Yes, there's a -- prior to deploying, we have a -- a

14: debrief with everyone involved, including the incident

15: commander, and we go over intent and what we want to

16: accomplish.

17: Q. And you served in that capacity as a prisoner

18: processing lieutenant between May 20 -- end of May 2020

19: and January 2021; is that correct?

20: A. Yes. Not every one, but several.

21: Q. On approximately how many occasions did you serve in

22: that capacity?

23: A. I would -- I do not remember. At least 15.

24: Q. Were you the prisoner processing lieutenant on January

25: 1st, 2021?



0016

01: A. No.

02: Q. Do you know who was?

03: A. I do not have that information, but I believe there was

04: not prisoner processing set up on January -- on that

05: date.

06: Q. So going -- well, we received an e-mail from Ms. Cowart

07: indicating that the City has no written policies or

08: procedures on this topic. Let me flip back to Exhibit

09: 52. Do you see that back on your screen again?

10: A. Yes.

11: Q. There are two sub parts: 1 (a) and 1 (b). Do you see

12: both of those?

13: A. I do.

14: Q. Regarding 1 (a), it states: Relevant City policies,

15: procedures, protocols, or practices. Do you see that?

16: A. I do.

17: Q. We received an e-mail from Ms. Cowart indicating that

18: the City does not have policies or protocols. Is that

19: what it was, policies or protocols?

20: MS. COWART: Do you want me to --

21: MR. PENCE: Procedures. Someone just spoke.

22: I didn't hear who that was.

23: MS. COWART: Braden, do you want me to pull up

24: the e-mail or no?

25: MR. PENCE: No, I can pull it up. So we'll

0017

01: mark this 53.

02: (Exhibit 53 marked for identification.)

03: Q. (By Mr. Pence) An e-mail from Ms. Cowart. Down here

04: it states: For the 30 (b)(6) deposition, I wanted to

05: provide a quick update regarding 1 (a). There are no

06: written policies or procedures as to this topic.

07: Captain Aagard will be prepared to testify about the

08: City's protocols and practices. Is that your

09: understanding, Captain Aagard?

10: A. Yes.

11: Q. All right. So what did you do to confirm that there

12: are no policies or procedures?

13: A. I had taken -- I have taken many promotional tests and

14: I've studied everything that's involved with our

15: policies and procedures on the Seattle Police

16: Department, and there are no written policies or

17: procedures for that topic.

18: Q. Okay. Should there be written policies or procedures

19: regarding this topic? Specifically, what individuals

20: should be arrested or transported to the jail during

21: large crowd events?

22: A. That is up to the chief.

23: Q. Okay. Well, you're testifying as the City. So is it

24: your testimony then as the City that this is a matter

25: of discretion for the chief, and this is not something

0018

01:           that the City would have any sort of position regarding  
02:           or whether there should be a written policy on this  
03:           topic?

04:                   MS. COWART:  Objection.  Mischaracterizes  
05:           testimony.  Beyond the scope.

06:       Q.  You can answer the question.

07:       A.  As law enforcement officers, we always look at the  
08:           totality of the circumstances no matter what an  
09:           individual is under arrest for.  We have to have  
10:           probable cause and -- and whether or not we book, it's  
11:           always totality of circumstances.  So that wouldn't  
12:           change for prisoner processing for a demonstration or a  
13:           large crowd event.

14:       Q.  So object as to nonresponsive.

15:               My question is whether the City has a position  
16:           regarding whether or not there should be a written  
17:           policy about SPD decision making for individuals  
18:           arrested and transported to the jail during protest  
19:           events?

20:                   MS. COWART:  Objection.  Scope.  You can  
21:           answer.

22:       A.  What was the question?

23:       Q.  (By Mr. Pence)  That -- well, okay.  The question is to  
24:           Topic 1, it says SPD's decision making with respect  
25:           to -- to which individuals are arrested and transported

0019

01: to the jail, right?

02: A. We always --

03: Q. So --

04: A. We -- we have written policies on arrest procedures,

05: but they're not specific to large crowd events because

06: the process is the same. So we don't have subtitles

07: for every situation in written policy because our --

08: our broad policy covers -- would cover any demo or

09: protest.

10: Q. Captain Aagard, my question was, that the topic says

11: SPD's decision making with respect to this topic,

12: right?

13: A. Okay. Yes.

14: Q. Okay. And then I've been told that you do not have a

15: written policy or procedure as to SPD's decision making

16: with respect to that topic, okay?

17: A. Correct.

18: Q. So my question is: What is your position as the City's

Pl's Obj.: 401-403.

19: designated witness regarding whether or not there

20: should be a written policy or procedure as to that

21: topic?

22: MS. COWART: Objection. Scope. You can

23: answer.

24: A. I don't believe that one is needed.

25: Q. (By Mr. Pence) Why not?

0020

01: A. Because we have -- we already have a written policy  
02: about when we can and can't arrest subjects or  
03: arrestees. We have to have probable cause, and the  
04: procedures are the same whether it's a demonstration, a  
05: 911 call, a Seahawks event. It covers all of those  
06: subtitles. We don't have specific ones for each  
07: condition.

08: Q. Are there any written protocols or practices as opposed  
09: to policies or procedures?

10: A. Written protocols?

11: Q. Correct. Written protocols or practices?

12: A. Yes.

13: Q. Okay. What are those?

14: A. For specifically what?

15: Q. Showing you again 52, I'm -- I've been told that  
16: there's no policies or procedures that are written.  
17: Now I'm asking about protocols and practices. What  
18: protocols or practices are written with respect to  
19: this?

20: A. They're not written. We have protocols that we do and  
21: that we go over at the start of each formal prisoner  
22: processing setup.

23: Q. Okay. And just verbally; is that right?

24: A. Yes. The written ones are just the protocols of we  
25: pick them up, we screen the arrests, we bring them to

0021

01: the precinct; we talk to them, we photograph them, we  
02: do a report. So they're very -- they're very general  
03: for any other arrest as well.

04: Q. All right. So in addition to 1 (a), there's also 1  
05: (b), which deals with the connection, if any, between  
06: this topic and the arrest and booking of plaintiffs at  
07: issue in this case. Do you understand that?

08: A. Yes.

09: Q. Okay. So we haven't had any objection or concerns  
10: raised by your attorney prior to the deposition  
11: regarding Topic 1 (a) and 1 (b), other than the issue  
12: about no written policies or procedures.

13: So my question for you is: Is there any confusion  
14: you have regarding this topic?

15: A. No.

16: Q. In the City's opinion, is this topic relevant to the  
17: disputes in this case?

18: A. Relevant to the what?

19: Q. To the disputes in this case?

20: MS. COWART: Objection. Scope. You can  
21: answer.

22: A. Yes.

23: Q. (By Mr. Pence) Are there any objections that you have  
24: to this -- or concerns that you have with respect to  
25: this topic?

0022

01: MS. COWART: Are you asking the witness if she  
02: has objections or me?

03: Q. (By Mr. Pence) Does the City have any concerns or  
04: complaints or criticisms about this topic?

05: MS. COWART: So we -- I -- I object that  
06: you're calling for a legal conclusion from the witness.  
07: You can answer.

08: A. Not that I can think of right now.

09: Q. (By Mr. Pence) Are there any limits on your testimony  
10: about this topic today?

11: MS. COWART: Objection. Confusing. Vague.

12: A. Limits would be I can only testify to what I know and  
13: what I have heard.

14: Q. (By Mr. Pence) Well, then we have a problem then  
15: because you're here testifying as the City, not just as  
16: your own personal knowledge and your own personal  
17: opinion. So you're -- you're charged with having  
18: the -- yeah, you're charged with having the knowledge  
19: of the entire City.

20: You're at a duty to educate yourself regarding  
21: topics. So we're going to go into some specifics about  
22: that. But if you're saying that you're not willing to  
23: testify with respect to the City's knowledge about this  
24: topic, then we have a problem, so --

25: MS. COWART: Braden, objection.

0023

01: Mischaracterizes testimony. Harassing. Let us -- just  
02: why don't you just answer [sic] your questions. I'm  
03: getting a little angry. If we need to get chambers on  
04: the phone, I'll do it, but let's just not go down this  
05: route. Ask your questions and see how it goes.

06: Q. (By Mr. Pence) My question is: Are there any limits  
07: on your testimony today?

08: MS. COWART: And that's -- objection. Asked  
09: and answered. And objection, vague.

10: Q. (By Mr. Pence) So I want to understand your answer,  
11: Captain Aagard. You said that you were only going to  
12: testify regarding your personal knowledge as to Topic  
13: 1, so is that correct?

14: A. Personal knowledge, I can't testify to what other  
15: people may have said that I wasn't aware of. I can  
16: only testify to the procedures and protocols that I was  
17: involved in.

18: Q. Okay. Well, we'll go a little further here regarding  
19: the knowledge that you have for Topic 1, but I think we  
20: have an issue that we're going to need to address. And  
21: whether we can proceed today or not with a witness who  
22: is not prepared to testify on behalf of the City is  
23: potentially an issue.

24: MS. COWART: Braden, she has already said that  
25: she understands she is speaking on the behalf of the



0024

01: City. This is just a -- this is a waste of time. It's  
02: a frolic and detour. You're being harassing. Ask the  
03: question and see how it goes.

04: MR. PENCE: Kerala, you are interrupting and  
05: making this slower than it needs to be, so please allow  
06: me ask my questions.

07: Q. (By Mr. Pence) All right. So Captain Aagard, what is  
08: the universe of information that is available to the  
09: City regarding Topic 1?

10: MS. COWART: Objection. Vague. Confusing.

11: A. Information is the practices that we use in my  
12: experience when I was involved with the prisoner  
13: processing.

14: Q. (By Mr. Pence) Is there anyone besides you who is  
15: involved with prisoner processing?

16: A. Yes.

17: Q. Who are those individuals?

18: A. I don't -- you mean specific names?

19: Q. Yes.

20: A. Lieutenants or sergeants? There's different ranks of  
21: people that did the prisoner processing. There's  
22: several lieutenants -- there were several lieutenants  
23: that acted as prisoner processing lieutenants.

24: Q. So the ranks of individuals who would occupy that job  
25: as far as you know are lieutenants and sergeants?

0025

01: A. Yes.

02: Q. All right. So you said there's several lieutenants.

03: Can you please list who those folks are for me?

04: A. I don't -- I would have to go back through the

05: paperwork to see exactly who was a prisoner processing

06: lieutenant at that time. There were several.

07: Q. All right. Do you know who the sergeants were who were

08: doing that job?

09: A. There were even more of those.

10: Q. Can you list any of them?

11: A. I cannot.

12: MS. COWART: Objection. Scope.

13: Q. (By Mr. Pence) All right. Did you speak to any of

14: those individuals, lieutenants or sergeants, who would

15: have done that job in preparation for this deposition?

16: A. No, no lieutenants or sergeants.

17: Q. Okay. Anyone besides lieutenants or sergeants, and not

18: including your attorney, who did you speak with to

19: prepare for this deposition?

20: A. I spoke with Chief Mahaffey, I spoke with Officer

21: Monique Avery, and Sergeant Kennard.

22: Q. So addressing Mahaffey first, what did you discuss with

23: Mahaffey?

24: A. We discussed the general practices of arrests of

25: individuals, to be specific, the one failure to

0026

01:           disperse arrest and also a media -- or not a media, but  
02:           a meeting he had with a particular individual whose  
03:           name I cannot think of right now.

04:        Q. So you discussed a meeting with an individual, but you  
05:           don't know who that individual was?

06:        A. I can't remember her name.

07:        Q. What was the meeting about?

08:        A. We didn't really get that far because Chief Mahaffey  
09:           could not remember the meeting.

10:       Q. What else did you discuss with Mr. Mahaffey?

11:       A. That was -- it was a short discussion. That was pretty  
12:           much it.

13:       Q. How long was the discussion approximately?

14:       A. 15 minutes at the most.

15:       Q. Did you discuss the arrests of the plaintiffs?

16:                MS. COWART: And just to jump in, so it's  
17:           absolutely fine to talk about your conversations with  
18:           Chief Mahaffey. I was there for the meeting, so just  
19:           don't repeat anything I said, but you probably don't  
20:           remember that anyway. But yeah, totally fine to answer  
21:           and talk about what you and Mahaffey talked about.

22:       A. Right. We talked about his -- we talked about his  
23:           conversation that he could not remember with this  
24:           particular individual that I cannot remember right now.  
25:           We talked about subjects that were arrested for failure

0027

01: to disperse and the reasons they were arrested.

02: Q. (By Mr. Pence) Okay. Well, what about the plaintiffs'

03: arrests, did you discuss that with Chief Mahaffey?

04: A. I don't remember -- we did not talk about that

05: specifically.

06: Q. Did you discuss with Chief Mahaffey the SPD's decision

07: making with respect to which individuals to arrest and

08: transport to the jail during 2020?

09: A. Yes, in regards to non-violent misdemeanors.

10: Q. And were you able to get all of the information you

11: wanted to get from Chief Mahaffey regarding your

12: preparation for this deposition?

13: A. Yes.

14: Q. What was the meeting about that he can't remember who

15: he met with?

16: A. I believe it was the protocols for jail bookings.

17: Q. Was this person an SPD employee or a King County Jail

18: employee or a member of the public; do you remember

19: anything about who it was that he -- does he remember

20: anything about who it was he met with?

21: A. The name is Cahill is coming to mind. C-a-h-i-l [sic].

22: Q. Okay. And who does that individual work for?

23: A. I believe she used to work for the Office of the Civil

24: Rights but is in a different capacity now. So I'm not

25: sure who she works with now.

D's Obj: 401, 402, 403  
(confusion/waste of time)

D's Obj: 401, 402, 403,  
801, 802 (Mahaffey  
statements)

0028

01: Q. And approximately when did the meeting occur?

02: A. Last week.

03: Q. He met with Cahill last week?

04: A. No, I met with Chief Mahaffey to discuss the meeting

05: that he had with her, but he did not recall it.

06: Q. I'm asking about approximately when the meeting with

07: Cahill occurred?

08: MS. COWART: We're starting to border on

09: questions that I posed rather than information

10: provided. Can you just focus on information provided

11: by Chief Mahaffey to our witness, because there were

12: topics that I brought up to try to prepare.

13: Q. (By Mr. Pence) So, Captain Aagard, what is your

14: understanding given the preparation you did for this

15: deposition about when the meeting occurred between

16: Cahill and Mahaffey?

17: A. It was at least a year ago. It wasn't anything recent.

18: Q. Was it -- did it occur prior to plaintiffs' arrests?

19: A. I don't know for sure, but if I remember correctly, I

20: believe it was after.

21: Q. Okay. What is that based on?

22: MS. COWART: So this is based on information

23: that I provided, not information Mahaffey provided. So

24: can we just try to have the questions in a way that

25: we're not -- that -- if you're asking about her meeting

0029

01: with Chief Mahaffey, can you just try to focus on  
02: information that he provided to her, factual  
03: information that he provided to her? Does that make  
04: sense, Braden?

05: Q. (By Mr. Pence) Captain Aagard, did you do anything  
06: other than speak with Chief Mahaffey to follow-up on  
07: the Cahill meeting?

08: A. No.

09: Q. Other than speak with your attorney?

10: A. There was an article or something in writing that I was  
11: provided to read.

12: Q. Was that regarding the Cahill meeting with Mahaffey?

13: A. I would have to refer to it and I don't have it with  
14: me.

15: Q. Okay. How long did you speak with Officer Monique  
16: Avery?

17: A. About an hour.

18: Q. What did you discuss with Officer Monique Avery?

19: A. I discussed her role as one of the officers in the  
20: prisoner processing.

21: Q. What was her role in prisoner processing?

22: A. She did a lot of the write-ups for the booking sheets.

23: Q. Are those like the sergeant booking -- like screening  
24: forms?

25: A. The officer -- they're the booking sheet for the jail

0030

01: which has the probable cause statement for booking.

02: Q. Did you look at any of those forms in preparation for  
03: the hearing or in preparation for deposition today?

04: A. I didn't -- I did not.

05: Q. Are you familiar with those forms?

06: A. I am.

07: MS. COWART: Braden, I think you're sharing  
08: your screen and you may not want to.

09: MR. PENCE: Fair enough.

10: Q. (By Mr. Pence) Exhibit 15 previously marked and  
11: admitted in this case is a screening form, Sergeant  
12: Arrest Screening Form. Are you familiar with those?

13: A. Yes.

14: Q. Do you know what the difference is between the  
15: Sergeants Arrest Screening Form and the jail write-up  
16: that you're indicating Officer Monique Avery was  
17: involved with?

18: A. Yes.

19: Q. What is the difference?

20: A. The sergeant arrest screening is when the sergeant  
21: talks to the arrestee and asks them questions about the  
22: arrest, medical issues, kind of an overall, Are you  
23: doing okay? Is there anything you want to tell me?  
24: And the booking sheets are the place we put the  
25: probable cause statements for the arrests for the jail

0031

01: to read.

02: Q. So are there probable -- are there those jail screening

03: forms for my clients?

04: A. There would be, yes.

05: Q. Have you reviewed those in preparation for today's

06: deposition?

07: A. No.

08: MS. COWART: Objection. Scope.

09: A. Sorry. No.

10: Q. (By Mr. Pence) What other information goes on there

11: besides probable cause?

12: A. Personal information: Their name, their date of birth,

13: address; what crime that they're charged with, location

14: of arrest, case number.

15: Q. Thank you.

16: MR. PENCE: I'm asking -- I'm making a formal

17: request right now, and we can follow-up in writing, but

18: a formal request that the forms that Captain Aagard is

19: referring to be provided for my clients. My

20: understanding is those have not been provided.

21: MS. COWART: Okay. Talk to me later. I'm not

22: sure if I understand what you're asking for, but I'm

23: happy to work with you on that later.

24: Q. (By Mr. Pence) Captain Aagard, do you understand what

25: I'm asking for?



0032

01: A. Yes.

02: Q. Will you please assist your attorney in finding --

03: locating those documents? Because they have not been

04: provided.

05: All right. So you -- and then Kennard, tell me

06: about how much time you spent discussing and preparing

07: for this deposition with Mr. Kennard?

08: A. I talked to him for about 30 minutes.

09: Q. What did you discuss?

10: A. We discussed his deposition.

11: Q. Did you discuss with him SPD's decision making with

12: respect to individuals who were arrested and

13: transported to King County Jail for booking for

14: protests in 2020?

15: A. Yes.

16: Q. And what did you learn from him?

17: A. I learned from him that it was my understanding after

18: talking with him because I needed to clarify some

19: things with him was that he believed that the booking

20: procedures were on a case-by-case basis and it was up

21: to the jail who they took and we screened it on a

22: case-by-case basis for non-violent misdemeanors.

23: Q. Anyone else did you speak to other than your attorney

24: and other than Mahaffey, Avery, and Kennard; anybody

25: else?

0033

01: A. No.

02: Q. Is there anybody else who would have knowledge  
03: regarding Topic 1 who you did not speak to?

04: A. Anyone that was involved in any of the demonstrations  
05: in prisoner processing or as an IC would have  
06: information during that time.

07: Q. Is there anyone else you wish you had an opportunity to  
08: speak with but did not in preparing for the deposition?

09: A. No.

10: Q. Were there -- what documents did you review in  
11: preparing for the deposition?

12: A. I reviewed news articles, depositions, and memos and  
13: e-mails.

14: Q. About how much time did you spend reviewing those  
15: documents?

16: A. Three to four hours in addition to the time I met with  
17: my attorney.

18: Q. Is there any other documents you wish you had an  
19: opportunity to review but didn't have access to?

20: A. No.

21: Q. After the time you spent speaking with these  
22: individuals and reviewing documents, to your knowledge,  
23: is there anybody who is more prepared than you to  
24: testify on behalf of the City regarding Topic 1?

25: A. No.

0034

01: Q. I'm going to share Exhibit 54.

02: (Exhibit 54 marked for identification.)

03: Q. (By Mr. Pence) These are Supplemental Disclosures by

04: the City of Seattle. All right. Do you see this

05: document in front of you?

06: A. Yes.

07: Q. A three-page PDF dated by counsel on the 14th day of

08: August 2023 disclosing two witnesses: Captain Lori

09: Aagard and Detective Monique Avery.

10: This statement: "Captain Aagard was assigned to

11: prisoner processing on many occasions during large

12: crowd events in 2020. Captain Aagard has information

13: about SPD's decision making with respect to which

14: individuals were arrested and transported to King

15: County Jail for booking during such events and how King

16: County Jail's booking restrictions affected SPD's

17: decision making?"

18: Is that a correct statement, Captain Aagard?

19: A. Yes.

20: Q. And Detective Avery is also disclosed here. You

21: referred to her as officer. Is this a detective as

22: well or was at the time?

23: A. She is a detective.

24: Q. All right. And it sounds like essentially the same

25: statement regarding scope of knowledge here that

0035

01: Detective Avery did about the same things you did; is

02: that true to your information and belief?

03: A. No, we had different -- we had different expectations

04: for what we did.

05: Q. Okay. And what were those differences?

06: A. I was in charge of the -- the entire prisoner

07: processing and booking, and she was in charge of the

08: writing the probable cause statement. So she was more

09: hands-on than I was as far as writing the -- up the

10: booking sheets. I had responsibility for the entire

11: crew.

12: Q. So you were Detective Avery's supervisor in that role?

13: A. Yes.

14: Q. All right. Given your personal background, training,

15: and experience and knowledge that we were told about in

16: August of 2023, all of the work you've done to prepare

17: for this deposition by talking to those individuals,

18: reviewing documents, are you prepared to testify and

19: bind the City with your answers regarding Topic 1

20: today?

21: A. Yes.

22: Q. So I'm going to go into back to Exhibit 52, the notice.

23: So there's a term here "large crowd event." What does

24: that term mean?

25: A. Large crowd event to me means a substantial amount of

0036

01: people that are planning an event. It can be a  
02: Seahawks game, it can be a 4th of July -- any event  
03: there's several people -- lots of people.

04: Q. Do the arrests that occurred outside of the east  
05: precinct on January 1st, 2021, that are the subject  
06: matter of this suit constitute a large crowd event?

07: A. No.

08: Q. So how does the term "large crowd event" apply to the  
09: protest activity that occurred in 2020? How did  
10: Seattle apply that? I understand you're saying that  
11: there's Seahawks games and other stuff. Focusing in on  
12: protests in 2020, how does large crowd event apply  
13: there?

14: A. So when there's a planned large crowd event during that  
15: time, we would activate our -- our SPOC, our special  
16: operations center, and we would have a formal IAP and  
17: people assigned to the event apart from the normal  
18: responsibilities.

19: Q. So I'm going to try and clarify right now that we're  
20: talking about large crowd events in the context of this  
21: deposition. I'm referring to protests-related large  
22: crowd events. I don't think we need to go into  
23: Seahawks games. Does that sound fair to you?

24: A. Yes.

25: Q. So what is -- I understand there's no written policy or

0037

01: procedure, but I guess my -- are there unwritten

02: policies or procedures that would apply to this?

03: MS. COWART: Objection. Vague. You can

04: answer.

05: A. When we do a large crowd event and we activate SPOC, we

06: do what's called an Incident Action Plan, which states

07: our commander's intent, our objectives, and what we

08: plan to accomplish and how we're going to accomplish

09: them for that particular event. So it's in our IAPs.

10: Q. (By Mr. Pence) I understand this may be confusing

11: partly because there's a distinction that's been drawn

12: between policy and procedure on the one hand that there

13: aren't any written policies or procedures but there are

14: protocols and practices.

15: And so I guess rather than getting too wrapped up

16: in the distinction there, I'm interested in your answer

17: being with respect to anything like that, whether it's

18: written or unwritten, what the City's policies or

19: practices are with respect to that.

20: So with respect to a large crowd event, how does

21: the IAP or whatever sort of planning document that SPD

22: produces in anticipation of a large crowd event, under

23: that approach, who has discretion for making arrests,

24: arrest decisions?

25: A. Under the IAP anybody can make an arrest at a large

Pl.'s Obj: 401-403  
(relevance, confusion,  
waste of time). Subject to  
Pl's MIL re: other  
activity at the East  
Precinct.

0038

01: crowd event.

02: Q. Do IAPs ever identify certain thresholds of activity or

03: public safety --

04: A. No.

05: Q. -- concerns in order to authorize arrests?

06: A. The standard is significant property damage or anything

07: that threatens the public safety is a threat to the

08: community or the police or the people that are involved

09: in the protest or bystanders. So that is kind of --

10: that is what we go -- and anyone can make that arrest

11: depending on what is happening in front of them.

12: Q. So those criteria, are those -- do those apply to all

13: IAPs in response to a large crowd event or are those

14: sort of the standing rules of engagement with respect

15: to making arrests?

16: A. It's stated on the IAPs in large crowd events, but if

17: an officer is on patrol they have that discretion to

18: make arrests to protect life and safety of the public.

19: Q. That was the case in 2020 up through January 1st, 2021?

20: MS. COWART: Objection. Confusing.

21: A. Yes, and it's -- we still operate with that, protecting

22: life and significant property damage, protecting the

23: public.

24: Q. (By Mr. Pence) Okay. What does significant property

25: damage mean?

D's Obj: 403 (confusion and mischaracterizes testimony)

PI's Resp.: relevant to City's interest in arrest. Testimony speaks for itself.

0039

01: A. Significant property damage means breaking out windows,  
02: denting cars.

03: Q. Did you say denting cars?

04: A. Yeah, if they were bashing cars. You know, significant  
05: property damage, felony-level property damage.

06: Q. So what about misdemeanor-level property damage, would  
07: that be -- meet the threshold for significant property  
08: damage?

09: A. It would depend on the totality of the circumstances in  
10: a large crowd event.

11: Q. Okay. So if we're talking about a protest that does  
12: not constitute a large crowd event, do those limits  
13: still apply or is something other -- some other  
14: practice with respect to non large crowd events?

15: A. If it's a non large crowd event and it's misdemeanor,  
16: non-violent, property damage, we're more likely -- or  
17: we will address it and it wouldn't be as targeted. We  
18: would -- if we saw someone doing misdemeanor property  
19: damage, we would address it quicker.

20: Q. What does that -- I'm sorry, I didn't hear the last  
21: word.

22: A. Quicker than in a large crowd event.

23: Q. And what does "address it" mean?

24: A. Make an arrest.

25: Q. So in a large crowd event, you're less likely to make



0040

01: an arrest?

02: A. Yes.

03: Q. Other than the life safety issue and the significant

04: property damage consideration that you have raised --

05: and I want to be broad as to life safety. You included

06: threats to bystanders, threats to officers, all of that

07: understood.

08: So setting those two considerations aside, were

09: there any other limits on SPD's discretion that it gave

10: officers to make arrests during protests in 2020?

11: A. No specific limits, but officers were directed not to

12: go into the crowds for safety. We were making targeted

13: arrests on the whole unless something was going on

14: right in front of that officer that he needed to stop

15: at the moment.

16: Q. Were there any limits based on the nature of the

17: offense?

18: A. Can you give me an example?

19: Q. Well, misdemeanor as opposed to felony, for example?

20: A. It would depend on the crowd, what was going on in the

21: totality of the circumstances.

22: Q. Was misdemeanor versus felony a factor that Seattle

23: Police Department approved officers using when

24: determining discretion to conduct an arrest in 2020?

25: A. It wasn't broken down like that. It was more life

0041

01: safety, overall totality of circumstances.

02: Q. So it was not a factor that SPD approved in terms of  
03: making decisions about arrests in 2020?

04: A. It wasn't specified felony versus misdemeanor. It was  
05: more broad. It was more life safety depending on the  
06: crowd, the circumstances of the day.

07: Q. Who had authority to make those decisions during large  
08: crowd events?

09: A. For who was going to be arrested or?

10: Q. Yes, who was going to be arrested?

11: A. The commander's intent was given at roll call at the  
12: start of each event. The IC would describe what he  
13: wanted to accomplish, but officers were always given  
14: the discretion based on the commander's intent to make  
15: arrests.

16: Q. How did Seattle Police Department maintain control over  
17: officer discretion -- given what you're saying, I  
18: understand completely that in the moment the officer  
19: has been given some sort of direction regarding the  
20: commander's intent, but how does SPD maintain a  
21: continuity of command and control following the event?

22: Is there a supervision, is there some tracking, how  
23: did SPD make sure that officers are exercising  
24: discretion appropriately?

25: MS. COWART: Objection. Compound. You can

0042

01: answer.

02: A. Well, there's the chain of command out in the field.

03: You have a captain, a lieutenant, and then you have

04: sergeants that are in charge of their squads. The

05: lieutenant and the captain place these squads of

06: officers in places with directions on what to do.

07: They're not allowed to -- or I mean, they're

08: discouraged from running into the crowd because it's

09: not safe. So when arrests were made, it was usually a

10: targeted arrest where they were told, this person is

11: going to be arrested, and they give a description, and

12: then it's a targeted arrest.

13: Q. (By Mr. Pence) So who makes that decision in advance

14: to make a targeted arrest?

15: A. They're -- it wasn't made in advance. It's made during

16: the protest or the demonstration. If someone is

17: seen -- for an example, throwing a bottle at bystanders

18: or the police, that description will go out and those

19: officers are directed, whether it's a -- usually a bike

20: squad will go in, surround that individual and arrest

21: them, just that one. It's a targeted arrest.

22: Q. When I say advance, I don't mean in advance of the

23: protest. I mean in advance of -- it's not like an

24: officer makes a decision and dives forward and grabs

25: somebody. If it's a targeted arrest, there's a

0043

01: decision to target a person, and that --

02: A. Right.

03: Q. -- targeted decision is made by the officer, or is

04: there supervision involved prior to the arrest itself?

05: A. It's -- it's usually someone that's watching the crowd

06: that sees this happening. And then they will call out

07: over the radio, This is what's going on, and they'll

08: direct the officers in to arrest the individual.

09: Q. So I have personal experience with an arrest occurring

10: on the 4th of July on Pine Avenue right about a block

11: away from the east precinct at around 12:30 or 1:00

12: where an officer came in and arrested an individual who

13: hadn't thrown anything or done anything to threaten

14: anybody. He was simply standing in the street.

15: Would that circumstance be consistent with what

16: SPD's practice and policy was with respect to who was

17: to be arrested during protests during 2020?

18: MS. COWART: Objection. Personal knowledge.

19: Beyond the scope. You can answer.

20: A. I would need to know the details of that particular

21: arrest to be able to answer that.

22: Q. (By Mr. Pence) Yeah. I can ask you to -- based on a

23: hypothetical that if you -- if the -- if an officer was

24: confronted with an allegation of pedestrian

25: interference, no allegation of assault, no allegation

0044

01: of confronting people or being violent, would that  
02: criteria meet Seattle Police Department's policy with  
03: respect to decision making about arrests and booking?  
04: A. It would depend on where the pedestrian interference  
05: was. If it was in the middle of a deserted street, no.  
06: If it was blocking an onramp to, say, Harborview where  
07: people needed to get medical attention, then yes. So  
08: it's still the totality of the circumstances.  
09: Q. We can be more specific on that point as well. This  
10: was on Pine Street just outside of the intersection  
11: with 11th in the middle of the afternoon on the 4th of  
12: July. Dozens and dozens of other people in the street,  
13: protest activity going on, but nothing violent.  
14: Would that be a circumstance in which that would  
15: comply with SPD's decision making at the time regarding  
16: arrests and booking?  
17: A. Was this the only person that got arrested?  
18: Q. Yes.  
19: A. Not knowing why the officers arrested them, there was  
20: probably another reason. Maybe he or she had already  
21: done something prior to coming there and they were  
22: tracking them or they had a warrant.  
23: Q. Okay. If we were to be specific on those points, that  
24: there had been nothing that the person had done  
25: illegally up to that point and that there was no

0045

01: warrants, is there any other factors that you can think  
02: of that might justify arrests under SPD's decision  
03: making at the time?

04: MS. COWART: Objection. Beyond the scope.

05: Calls for speculation. You can answer.

06: A. We don't arrest people that are just casually standing  
07: on the street unless there's extenuating circumstances  
08: or we have warned them to -- to disperse.

09: Q. How does SPD ensure that?

10: A. Ensure what?

11: Q. Ensure that what you just said, that officers don't  
12: make inappropriate arrests at protests, how do you  
13: track and monitor and follow-up on arrests?

14: A. That's the sergeant's responsibility. He's -- he or  
15: she is responsible for their squad and they screen all  
16: of those arrests prior to booking.

17: Q. So if someone was arrested and booked into the King  
18: County Jail, that would have been a decision that was  
19: approved by the sergeant; is that right?

20: A. Correct. Correct.

21: Q. Is there any -- any additional layer of supervision or  
22: tracking that SPD does beyond the sergeant to ensure  
23: that protests during [sic] arrests are appropriate?

24: A. On a daily -- on a daily during 911 like on patrol or  
25: demos or what are you specifying?

0046

01: Q. Anything beyond the level of a sergeant's review that  
02: would allow SPD to review arrests and make sure that  
03: the arrests at protests are lawful and appropriate?

04: A. We have several layers of accountability. We have our  
05: OPA. If anyone has an issue, they can file a  
06: complaint. We have three layers of oversight with the  
07: first one being OPA. And if there's a complaint made,  
08: OPA investigates.

09: Q. And what we have been talking about with respect to the  
10: decision -- SPD's decision making for arrests and  
11: booking decisions, was that all accurate as of January  
12: 1st, 2021?

13: A. Yes, it's the same, same today.

14: Q. Moving on to the decision to who to transport to King  
15: County Jail for booking, who -- was there any limit on  
16: who could be booked into the King County Jail during  
17: large crowd events?

18: A. Some nights there was more limits depending on  
19: different factors, but overall, no, there was no  
20: specified limits or written protocols as far as  
21: limiting.

22: Q. What were the factors?

23: A. The factors were on a case-by-case basis, totality of  
24: circumstances, if it was a felony or a violent  
25: misdemeanor. And if it didn't meet those, then it

0047

01: would be screened with the jail.

02: MS. COWART: Braden, we have been going a

03: little over an hour.

04: THE WITNESS: I was going to ask to go to the

05: restroom.

06: MR. PENCE: We can do five minutes. How about

07: 1:55?

08: MS. COWART: Okay. It might be like

09: seven-and-a-half minutes, but we'll take a break and

10: come back as quickly as we can.

11: MR. PENCE: My hope is that we get through

12: this today. So that will help if we do more today

13: rather than having to come back.

14: MS. COWART: That would be good.

15: MR. PENCE: See you soon.

16: THE VIDEOGRAPHER: Going off the record at

17: 1:49 p.m.

18: (Recess taken.)

19: THE VIDEOGRAPHER: Back on the record at 1:58

20: p.m.

21: Q. (By Mr. Pence) So, Captain Aagard, what is -- if I

22: understand you correctly, your definition of large

23: crowd event is that there are a large number of people

24: and some sort of event that you have pre notice for so

25: that you can issue an IAP and initiate SPOC; is that



0048

01: right?

02: A. That's best case scenario. Sometimes we get large

03: crowd events that we haven't planned for as well as.

04: Q. Okay. And your testimony is that the plaintiffs'

05: arrests was not a large crowd event?

D's Obj: duplicative  
of 36:04-36:07

06: A. Correct.

07: Q. So what is it you're able to testify to regarding the

08: plaintiffs' arrests?

09: A. You would have to ask me a question and I can give

10: protocols, policies that we use for arresting people in

11: the field.

12: Q. So you are prepared to answer questions regarding

13: plaintiffs' arrests; is that correct?

14: MS. COWART: Objection. Beyond the scope.

15: Mischaracterizes testimony.

16: A. I can -- yes.

17: Q. (By Mr. Pence) What -- what is it that makes

18: plaintiffs' arrests not a large crowd event?

19: A. There was not very many of them; the sheer size of the

20: individuals that were there.

21: Q. What would be the cutoff generally speaking for that

22: criteria to be met?

23: A. You know, there's no hard and fast rule, but 20 to 50,

24: right in there, would be what I would consider a large

25: crowd event.

0049

01:	Q. What would be the different policies or protocols that	
02:	would apply to a large crowd event as opposed to	Pl's Obj.: Relevance
03:	plaintiffs' arrests?	(401-403). Witness testified
04:	A. There wouldn't be a difference except for the fact that	plaintiffs' arrest was not large crowd event.
05:	we would plan and ensure that we had proper -- the	
06:	proper amount of personnel to ensure that the crowd was	
07:	safe and the community was safe during it.	
08:	Q. So authority for making these decisions and the factors	
09:	that should apply to them and the fact that it's case	
10:	by case and like the other factors you've talked about,	
11:	those would apply to large crowd events as well as to	
12:	an event like the one where my clients were arrested?	
13:	A. The arrests that you're referring to with your clients	
14:	was a 911 call. I wouldn't call it an event.	
15:	Q. Tell me what you mean by -- tell me what you understand	
16:	about my clients' arrests.	
17:	A. From what I --	
18:	MS. COWART: Objection. Vague. You can	
19:	answer.	
20:	A. What I know is that there was eight to -- around eight	Pl.'s Obj.: 403
21:	people that were outside the east precinct writing with	(confusion, no 911
22:	chalk and standing around the precinct.	call).
23:	Q. And your understanding was it was a 911 call?	
24:	MS. COWART: Objection as scope. You can	
25:	answer.	

0050

01: A. It was like a 911 call that would have come from the  
02: community. I believe it was from the clerk to patrol,  
03: but the protocol was one like a 911 call coming in from  
04: a community member.

05: Q. (By Mr. Pence) The factors that apply to large crowd  
06: events, which I understand you to say are essentially  
07: the same as they would apply to my clients' arrests,  
08: those factors were it's a case-by-case basis dealing  
09: with whether it's a felony or misdemeanor, there's sort  
10: of officer discretion involved. Are there any other  
11: major factors that we should know about with respect to  
12: SPD decision making for arrests and booking?

13: MS. COWART: Objection. Vague.  
14: Mischaracterizes testimony. Scope. You can answer.

15: A. Ongoing threat to the community, any danger to the  
16: community or police or bystanders.

17: Q. That's the life safety factor, right?

18: A. No, it's ongoing threat to the community depending on  
19: the totality of the circumstances and what they are  
20: doing.

21: Q. All right. Ongoing threat, life safety issues,  
22: substantial property destruction, what other factors  
23: might apply?

24: MS. COWART: Objection. Vague. Scope.

25: A. Repeat offenders.

0051

01: Q. (By Mr. Pence) Anything else?

02: MS. COWART: Same objections.

03: A. Not that I can think of right now.

04: Q. (By Mr. Pence) Are there any factors that are

05: prohibited by the Seattle Police Department with

06: respect to making the decision to arrest or book

07: someone during a protest event?

08: A. No.

09: Q. Will you be testifying at trial about anything other

10: than large crowd events?

11: MS. COWART: Objection on personal knowledge.

12: Calls for speculation. Beyond the scope.

13: A. I would be testifying to whatever I'm testifying here

14: today on.

15: Q. (By Mr. Pence) So I asked you a series of questions

16: about how Seattle Police Department monitored,

17: influenced, or controlled officer discretion with

18: respect to arrests during 2020 protests. Same question

19: with respect to the decision to book.

20: How did SPD influence, monitor, and control those

21: decisions?

22: A. It was on a case-by-case basis and we would screen it

23: with the jail. And if it met their criteria, we would

24: transport and book them.

25: Q. So if an officer was making a decision to book someone

D's Obj: 403 (mischaracterizes intended testimony)

PI's Resp.: Testimony speaks for itself.

0052

01: on the basis of their participation in non-violent  
02: protests or criticizing the police, how would the  
03: Seattle Police Department know that? How would Seattle  
04: Police Department apprise itself of an improper basis  
05: for retaliating?

06: A. Are you talking about a large crowd or a 911 call?

07: Q. Well, let's first talk about a large crowd.

08: A. For a large crowd, the prisoner processing team would  
09: decide whether or not to book after screening it with  
10: the jail. The officers would make the arrest in the  
11: field, then it was screened by a sergeant, and then by  
12: the prisoner processing team. So the officer was  
13: making the decision to arrest but not to book.

14: Q. For large crowd events?

15: A. Correct.

16: Q. How does that differ from non large crowd events?

17: A. The difference is there's not a prisoner processing  
18: team set up for 911 calls. The officers make the  
19: arrest and they screen it with a patrol sergeant and  
20: the decision is made by the patrol sergeant whether or  
21: not to book, if or with the screening at the jail.

22: Q. All right. So I'm a little confused. I'm going to go  
23: back to Exhibit 54 regarding what you're going to be  
24: testifying about. All right. Do you have Exhibit 54  
25: in front of you again? This is the supplemental

0053

01: disclosures.

02: It states here for number one: Captain Lori Aagard  
03: that you were assigned to prisoner processing during  
04: large crowd events. You have information about SPD's  
05: decision making with respect to individuals that were  
06: arrested during such events.

07: So what I fail to understand is what the scope of  
08: your testimony would be at trial. And I'm -- you  
09: haven't been disclosed as a witness to testify about  
10: anything other than large crowd events?

11: MS. COWART: Objection. This is beyond the  
12: scope. It calls for speculation. Calls for a legal  
13: conclusion.

14: Q. (By Mr. Pence) Well, I'm asking the witness: Do you  
15: as the City's 30 (b)(6) designee intend to testify on  
16: anything other than the topics about which you have  
17: been disclosed as testifying during the 30 (b)(6)  
18: deposition?

19: MS. COWART: Objection. The -- anything about  
20: trial is outside the scope.

21: MR. PENCE: No, it's not.

22: MS. COWART: That this was noticed for.

23: MR. PENCE: No, it's not. The 30 (b)(6)  
24: testimony is intended to define what the City's  
25: testimony will be at trial, not just at -- with respect

0054

01: to what -- with respect to these -- this topic. The  
02: City doesn't get to pick and choose what testimony it  
03: wants to present at trial. This is the testimony at  
04: trial.

05: Q. (By Mr. Pence) So, Captain Aagard, is there anything  
06: beyond -- anything that you intend to testify to  
07: regarding Topic 1 that hasn't been disclosed  
08: previously?

09: MS. COWART: Same objections.

10: A. I -- I'm a little confused. I answered the questions  
11: that you asked me. I didn't volunteer information  
12: about non large crowd events you specifically asked me,  
13: so I answered them.

14: Q. (By Mr. Pence) So other than submitting a complaint  
15: about a booking and other than the sergeant's review,  
16: is there anything the Seattle Police Department does to  
17: monitor, influence, or control officer decision making  
18: regarding booking in response to protests in 2020?

19: MS. COWART: Objection. Scope. You can  
20: answer.

21: A. We have a full -- if there's any force used, we have a  
22: full -- it's called our Force Review Board, which I was  
23: the chair of for a year. And it looks at the entire  
24: incident, the probable cause, the legal authority for  
25: that arrest, and deescalation tactics. It looks deeply

**Pl's Obj: Relevance  
401-403.**

0055

01: into any incidents where officers use force, so that is  
02: a very thorough layer of oversight that our department  
03: uses.

04: Q. Okay. So if an officer doesn't use force but is making  
05: an arrest and booking decision, is there any  
06: supervision that SPD has other than the sergeant's  
07: review and if someone submitted a complaint?

08: MS. COWART: Objection. Scope you can answer.

09: A. We have body-worn video as well as ICB. Everything  
10: those officers do is on multiple cameras. So  
11: everything is recorded. So any citizen could ask for a  
12: public disclosure and get all of the video from that  
13: incident as well as all of the reports if they wanted  
14: to.

15: Q. (By Mr. Pence) So in a non large crowd event, who is  
16: it that makes the decision to book?

17: MS. COWART: Objection. Scope. You can  
18: answer.

19: A. The officer screens it with the sergeant and the  
20: sergeant has the ultimate responsibility whether or not  
21: that person should be booked. But they take into  
22: account officers -- what the officers say as well. But  
23: the sergeant has the ultimate authority on whether or  
24: not they should be booked, but they still have to  
25: screen it with the jail if it's a non-violent



0056

01:               misdemeanor. So ultimately it would be up to the jail.

02:               MR. PENCE: Object as to the portion of that

03:               answer that as nonresponsive.

04:               Q. (By Mr. Pence) How are officers and the sergeants

05:               advised about Seattle Police Department's policy

06:               regarding decisions to book?

07:               MS. COWART: Objection. Scope. You can

08:               answer.

09:               A. We are still operating under the Covid restrictions

10:               that were put in place in 2020, so we do have protocols

11:               where if it's a non-violent felony, we have to screen

12:               with the jail on a case-by-case basis.

13:               Q. My question is: How are the officers and the sergeants

14:               advised about this policy? Not anything about the

15:               Covid. How -- you're -- the topic you're testifying is

16:               about SPD's decision making. You just said that the

17:               decision is made by the officer and then reviewed by

18:               the sergeant.

19:               So my question is: How does SPD's decision making

20:               communicate that policy or practice or procedure, how

21:               is that communicated to the officers and the sergeants

22:               who are actually doing it?

23:               MS. COWART: Objection. Compound. Confusing.

24:               Scope. You can answer.

25:               A. Officers have discretion in the field to place people

0057

01: under arrest, transport them to the precinct, and then  
02: screen it with the sergeant and to book them if  
03: appropriate. The officers have that discretion in the  
04: field to make the arrest and bring them to the precinct  
05: where the arrest is then screened by the sergeant.

**Pl's Obj:  
Personal  
knowledge,  
relevance, legal  
conclusion. FRE  
401-403, 602.**

06: Q. (By Mr. Pence) How are officers and sergeants advised  
07: about the factors that they're -- they are to consider  
08: in making these decisions?

09: MS. COWART: Objection. Vague. Scope. You  
10: can answer.

11: A. They need to have legal authority, they need to have  
12: lawful purpose, they have to have probable cause. And  
13: if they have those three things, then they are allowed  
14: to screen a booking to get them booked into the King  
15: County Jail if appropriate.

16: Q. (By Mr. Pence) Is there any training regarding --

17: MS. COWART: Objection.

18: Q. -- how SPD's -- does SPD give its officers or sergeants  
19: any training regarding the factors that were to be  
20: considered in making determinations about whether to  
21: book an arrest in 2020?

22: MS. COWART: Objection. Scope. You can  
23: answer.

24: A. If all of the factors are met with legal authority,  
25: lawful purpose, and probable cause, the training is

0058

01: it's a case-by-case basis. And if they're an ongoing  
02: threat to the community, it would be better to book.  
03: Like a DV, we book them to unplug them from the scene  
04: because they're an ongoing threat to that DV victim.

05: So we have conditions when we are mandated by state  
06: law to book. So we give training on things like that,  
07: yes.

08: Q. (By Mr. Pence) Does SPD know how many people were  
09: arrested during protests for non-violent offenses that  
10: did not qualify for booking under the book restrictions  
11: during 2020?

12: MS. COWART: Objection. Scope. You can  
13: answer.

14: A. We have numbers of the people that we arrested and that  
15: were booked, yes.

16: Q. (By Mr. Pence) Okay. And how many people were  
17: arrested during 2020 for misdemeanors that did not  
18: qualify for booking under the booking restrictions?

19: MS. COWART: Objection. Scope.

20: A. I am not aware of any bookings that were booked that  
21: did not qualify for booking under the non-violent  
22: misdemeanor restriction.

23: Q. (By Mr. Pence) Did SPD track that?

24: MS. COWART: Objection. Scope. You can  
25: answer.

0059

01: A. I'm not sure if they tracked that, what you're saying.

02: Q. (By Mr. Pence) What I'm specifically saying is protest

03: arrests, was SPD tracking the number of arrests during

04: the protests and then tracking what the offenses they

05: were arrested for?

06: A. Yes.

07: Q. Okay. How many people were arrested -- do you know how

08: many people were arrested during 2020 protests?

09: MS. COWART: Objection. Scope. You can

10: answer.

11: A. I don't know the total.

12: Q. (By Mr. Pence) What do you know about the number?

13: MS. COWART: Objection. Scope. You can

14: answer.

15: A. I know about some of the numbers on the nights that I

16: worked prisoner processing how many were arrested and

17: booked.

18: Q. (By Mr. Pence) I'm going to show you what has been

19: marked previously as Exhibit -- Plaintiffs' Exhibit 2.

20: It's a two-page PDF. Do you see that on your screen?

21: A. Yes.

22: Q. All right. This is a March 24th, 2020 Memorandum from

23: the King County Jail's Director John Diaz to King

24: County Sheriff and Police Chiefs.

25: Have you seen this document before?

0060

01: A. Yes.

02: Q. This was -- and obviously addressed to police chiefs

03: would be including the Seattle Police Department chief.

04: Do you know whether this was received by the Seattle

05: Police Department chief?

06: A. I don't know for sure if he read it.

07: Q. When this was sent, to be clear, the chief would have

08: been Chief Best, correct?

09: A. Yes.

10: Q. Do you know whether Chief Best or now Chief Diaz

11: received this document?

12: A. I'm assuming they read it, but I can't testify to the

13: fact that they for sure did.

14: Q. Was this document discussed internally by SPD command

15: staff?

16: A. I am not sure about that. I wasn't on the command

17: staff with SPD.

18: Q. Given that you're testifying as a 30 (b)(6) witness for

19: the City of Seattle, was this document considered at

20: all with respect to the decision making Seattle Police

21: Department was making with respect to protest arrests

22: and bookings?

23: A. Yes, that is why we had the restrictions on the

24: non-violent misdemeanors and why we had to screen it

25: with the jail on a case-by-case basis.

0061

01: Q. And was that the policy as of the beginning of the 2020  
02: protests? So this goes in place in March, protests  
03: really begin the end of May. What was the SPD policy  
04: as of that period of time about the County's booking  
05: restrictions?

06: A. This applied -- the first protest that I worked was the  
07: May 30th, and this was taken into account for that.

08: Q. Okay. So Captain Aagard, I'm asking you in your  
09: capacity as a 30 (b)(6) witness and not with your  
10: personal -- your personal testimony. So for the City  
11: of Seattle, did this policy apply to bookings prior to  
12: the 2020 protests in May?

13: MS. COWART: Objection. Vague. Confusing.

14: A. We were aware of this and we did -- it was provided to  
15: patrol during that time March 24th, 2020. People were  
16: aware of the restrictions because of Covid.

17: Q. (By Mr. Pence) And you as City of Seattle understood  
18: that this restriction was a health measure, correct?

19: MS. COWART: Objection. Scope. You can  
20: answer.

21: A. That's what the memo says, to cut down the amount of  
22: inmates in the jail so they could all have their own  
23: bunk. And Seattle police also were being very careful  
24: with arrestees as well as because we didn't want to  
25: catch -- and catch Covid. So we had protocols in place

**Pl's Obj:  
Personal  
knowledge,  
relevance, legal  
conclusion. FRE  
401-403, 602.**

0062

01: as well.

02: Q. (By Mr. Pence) Right. We're talking about SPD

03: decision making, and so part of the decision is that

D's Obj: Outside  
Scope of 30(b)(6)

04: we're dealing with a contagious virus that the City

05: acknowledges is potentially fatal, right?

06: A. Correct.

07: MS. COWART: Objection. Scope. You can

08: answer.

09: A. Correct.

10: Q. (By Mr. Pence) And the risk is to the public; it's to

11: City employees, it's to detainees, it's to County

12: employees, the jail, it's to the community at large,

13: correct?

14: A. Correct.

15: Q. (By Mr. Pence) And that risk, this health concern, is

16: especially valid in congregate settings where you have

17: lots of people milling around each other, right, like

18: jail?

19: A. Correct.

20: Q. And those concerns all applied as of January 1st, 2021,

21: did they not?

22: MS. COWART: Objection. Scope. You can

23: answer.

24: A. The protocols were still in place during that time.

25: Q. (By Mr. Pence) Right. And the health concerns

0063

01: underlying those protocols all applied as of January

02: 1st, 2021, as they pertained to Seattle Police

03: Department decision making, correct?

04: MS. COWART: Objection. Scope. You can

05: answer.

06: A. Correct.

07: Q. (By Mr. Pence) And the strategy that this memo

08: outlines as it pertains to Seattle Police Department

09: decision making in Topic 1, the strategy was to reduce

10: the jail population by restricting eligibility to book,

11: literally booking restrictions, right?

12: MS. COWART: Objection. Confusing. You can

13: answer.

14: A. It was a guideline, but there was always -- there was

15: always the direction that we could screen with the jail

16: on a case-by-case basis with the underlying reasoning

17: being if they were going to be an ongoing threat to the

18: community or factors that would endanger anybody.

19: Q. (By Mr. Pence) We're having a bit of a communication

20: problem. I'm not asking for that. My question was

21: that you understood -- that the City of Seattle

22: understood that the strategy was to reduce the jail

23: population?

24: MS. COWART: Objection. Argumentative.

25: Confusing. Scope. You can answer.



0064

01: A. According to this memo, yes, that is what the Director  
02: John Diaz was trying to accomplish to have less people  
03: in the jail because they had reduced space.

04: Q. (By Mr. Pence) And the way that the King County Jail  
05: elected to accomplish that was by restricting the  
06: offenses that were eligible for booking. Did the City  
07: understand that?

08: MS. COWART: Objection. Scope. You can  
09: answer.

10: A. Yes.

11: Q. (By Mr. Pence) And the City understood that the  
12: strategy rendered most misdemeanor offenses not  
13: eligible for booking. We'll get into the exception in  
14: a second, but you understood the general approach was  
15: to make most misdemeanors ineligible?

16: MS. COWART: Objection. Confusing. Compound.  
17: You can answer.

18: A. We never understood it as a hard line. It was always  
19: the totality of the circumstances surrounding the  
20: arrest.

21: Q. (By Mr. Pence) We're going to get into the exception  
22: in a just second, Captain Aagard. I'm not trying to  
23: ask you a trick question. I want to -- I understand  
24: that the City understood that the strategy to reduce  
25: the jail population in response to this deadly threat

0065

01: was to make most misdemeanor offenses ineligible for  
02: booking. Did the City understand that or not?

03: MS. COWART: Objection. Argumentative.  
04: Confusing. Scope. You can answer.

05: A. If you take out ineligible, I would say yes. But  
06: because you're saying "ineligible," then that is not  
07: what we understood because there was always the  
08: case-by-case exception.

09: Q. (By Mr. Pence) So right here where it says "Jails will  
10: not accept people brought in for misdemeanor charges  
11: except for the following charges that present a serious  
12: public safety concern." You found that -- you  
13: understood that to not be a hard line, that was a  
14: guideline?

15: A. There is more to the memo. Just looking at that --

16: Q. There is.

17: A. -- is confusing because another memo says "case-by-case  
18: basis."

19: Q. Well, there's another part on the next page, but I'm  
20: asking about this right now, where it says "Jails will  
21: not accept people brought in for misdemeanor charges  
22: except for the following charges that present a serious  
23: public safety concern." Your understanding was that  
24: was not a hard line?

25: MS. COWART: Objection. Mischaracterizes

0066

01: testimony. You can answer.

02: A. Yes, it was not a hard line because there's always  
03: exceptions.

04: Q. (By Mr. Pence) Did the Seattle Police Department have  
05: any understanding of what was going on with the jail  
06: population under their booking restrictions?

07: A. Going on in what respect?

08: Q. Well, measuring the population of the jail. There's a  
09: couple different ways to do that. One would be average  
10: daily population. Did Seattle Police Department  
11: maintain an awareness of what was going on with the  
12: average daily population of the jail?

13: MS. COWART: Objection. Scope. You can  
14: answer.

15: A. I wasn't aware of any numbers that we got daily from  
16: the jail, no.

17: Q. (By Mr. Pence) So was the jail's population, did that  
18: have anything to do with Seattle Police Department's  
19: decision making about arresting and booking people?

20: A. According to this memo, we -- we followed this memo  
21: with the added exception for screening, case-by-case  
22: basis, we did follow it.

23: Q. Okay. I'm asking you about how you would know about  
24: the jail population. Did the Seattle Police Department  
25: track and consider measurements of the jail population

0067

01: when making booking restriction decisions -- sorry,

02: booking decisions?

03: A. That was part of our screening process when I would

04: screen with the jail on the -- the night of, that was

05: taken into consideration by the jail.

06: Q. Was it taken in consideration by the Seattle Police

07: Department?

08: A. When I screened they would inform me of certain things

09: and not allow bookings based on their numbers or their

10: staffing.

11: Q. What would they inform you about?

12: A. Sorry, what?

13: Q. You said they informed you of certain things. What are

14: those certain things?

15: A. Staffing, how many people were on duty to take care of

16: inmates that were there.

17: Q. Anything else?

18: A. No.

19: Q. Did the Seattle Police Department keep officers

20: apprised of the average daily population of the King

21: County Jail on any given day?

22: A. No.

23: Q. Why not?

24: A. It wasn't something that was messaged out to officers.

25: I'm not -- I can't speak to conversations that other

0068

01: people may have had with the jail, but it was never

02: messaged out if they did.

03: Q. Was the Seattle Police Department's decision making

04: with respect to arrests and bookings during the period

05: of time covered in Topic 1, did that consider as a

06: factor the City's desire to not spread Covid-19?

07: A. Can you rephrase that? That was a little confusing.

08: Q. Yeah. Did the City of Seattle consider Covid-19 as a

09: factor when making decisions addressed under Topic 1?

10: A. Yes.

11: Q. Tell me about that.

12: MS. COWART: Objection. Vague. You can

13: answer.

14: A. Officers were concerned about getting Covid as well.

15: We had protocols in place, we wore masks, we wore

16: coverings when needed. If there was an arrest that

17: didn't meet the protocols and didn't meet any

18: exceptions on that case-by-case basis, then they would

19: release them.

20: Q. (By Mr. Pence) Anything -- any concerns that SPD had

21: about Covid-19 as addressed under Topic 1 beyond

22: officer safety?

23: A. Safety for the arrestees as well. We didn't want to

24: put them in the same holding cell. Sometimes we

25: provided them with masks.

0069

01: Q. Does the City recognize that with respect to its  
02: decision making about arresting people for non-violent  
03: offenses under the case-by-case basis or anything else,  
04: does the City recognize the risk posed by jail churn,  
05: what that term means?

06: A. I don't know what jail churn is.

07: Q. So jail churn is instead of a person being booked into  
08: the jail for a long period of time and thereby  
09: increasing the jail population over a long period of  
10: time, being booked in and then being released within a  
11: few hours. That's a jail churn. So you're going in  
12: and out quickly.

13: A. Administratively booking?

14: Q. Well, I'm not -- administrative -- so a person who gets  
15: booked into the jail, so arrives at the jail is put in  
16: jail clothes, photographed, fingerprinted, held for a  
17: number of hours and then released. Is that what you  
18: mean when you say "administrative booking"?

19: A. It sounds similar. I've never heard jail churn before,  
20: but administratively booked means about that.

21: Q. Okay. So does the City recognize that having someone  
22: exposed to the jail and also to put them -- bring their  
23: own viruses, whatever those may be, into the jail on a  
24: brief stay creates a risk to officers, to the public,  
25: to detainees, and so forth?

0070

01: MS. COWART: Objection. Scope. You can

02: answer.

03: Q. (By Mr. Pence) And I'll just say as it pertains to the

04: City decision making with respect to booking and

05: arrests under Topic 1?

06: MS. COWART: Objection. Confusing.

07: Objection. Scope. You can answer.

08: A. There were a lot of concerns and that is one of them.

09: Large crowds is another concern. Any people gathering

10: in a large crowd is a concern.

11: Q. (By Mr. Pence) People gathering in a large crowd by

12: itself is a concern?

13: MS. COWART: Objection. Scope. You can

14: answer.

15: A. Any get-togethers during that time or large crowds

16: were -- or family functions with several people, they

17: were all discouraged.

18: Q. (By Mr. Pence) Does that concern get worse if it

19: involves officers arresting someone, how the contact

20: there with City employees and then taking to them to

21: the jail where they have more contact with County

22: employees and detainees with respect to decision making

23: under Topic 1?

24: MS. COWART: Objection. Scope. Confusing.

25: You can answer.

0071

01: A. Any of that is a concern. That is why we had to weigh  
02: that with any ongoing threat to the community. So that  
03: was what we weighed.

04: Q. (By Mr. Pence) I'm going to show you Exhibit 2 again,  
05: the booking restrictions. Did the Seattle Police  
06: Department honor these restrictions?

07: A. As far as I know, we honored those restrictions unless  
08: there was an ongoing threat to the community that  
09: surrounded any non-violent felony.

10: Q. Did the Seattle Police Department know that Covid-19  
11: was circulating within the King County Jail on or  
12: before January 1st, 2021, and that factor, how that  
13: might apply to SPD decision making?

**Pl's Obj:  
Personal  
knowledge, FRE  
602.**

14: MS. COWART: Objection. Scope. You can  
15: answer.

16: A. The decision making was up to the jail. We never  
17: booked anyone unless they said it was okay to book.  
18: The ultimate decision was always with the jail. We  
19: could never override the jail. They're the ultimate  
20: authority on it that. Not us.

21: MR. PENCE: Object as nonresponsive.

22: Q. (By Mr. Pence) My question is: Did the Seattle Police  
23: Department know that Covid-19 was circulating within  
24: the King County Jail on January 1st, 2021?

25: MS. COWART: Objection. Scope. You can



0072

01: answer.

02: A. I don't think we would have known on that specific date  
03: how many people were positive for Covid in the jail. I  
04: know it was a concern worldwide. I don't know  
05: specifically on that date how many arrestees in the  
06: County jail had Covid.

07: Q. (By Mr. Pence) Was the Seattle Police Department aware  
08: that at any point prior to January 1st, 2021 -- well,  
09: let's just do through December, December 2020, was the  
10: Seattle Police Department aware that there was Covid-19  
11: circulating in the King County Jail?

12: MS. COWART: Objection. Scope. You can  
13: answer.

14: A. I think we were aware that there was Covid in the  
15: prisons, in the jails, kind of like the -- any place  
16: where there was a lot of people, but I didn't have the  
17: exact numbers.

18: Q. (By Mr. Pence) How did the Seattle Police Department  
19: monitor its compliance with the booking restrictions  
20: prior to January 1st, 2021?

21: MS. COWART: Objection. Confusing. Outside  
22: the scope. You can answer.

23: A. We monitored how many people were booked in large crowd  
24: functions. But other data broken down more than that,  
25: I'm not sure.

0073

01: Q. (By Mr. Pence) Do you know how many people were booked  
02: in large crowd events during 2020?

03: MS. COWART: Objection. Asked and answered.  
04: Outside the scope. You can answer.

05: A. You asked me that before and I said I didn't have a  
06: total number.

07: Q. (By Mr. Pence) So if all you're tracking is the number  
08: of people booked during large crowd events, how do you  
09: assess SPD's conformity with the restrictions?

10: MS. COWART: Objection. Scope. Confusing.  
11: You can answer.

12: A. That is confusing. I'm sure that there's some way to  
13: track how many bookings SPD made into the King County  
14: Jail because we do have a contract with them. I'm sure  
15: there's a way to get that data, but I do not have that  
16: data.

17: Q. (By Mr. Pence) Is it fair to say that Seattle Police  
18: Department's directions to its officers regarding  
19: decisions to arrest and book during 2020 protests did  
20: not depend upon a regular assessment of the jail's  
21: population or SPD's overall compliance with the  
22: restrictions?

23: A. It was a case-by-case basis. We took into account  
24: safety of the community. That was our paramount.

25: Q. (By Mr. Pence) Was -- did Seattle Police Department

0074

01:           become aware of prior to January 1st, 2021, any  
02:           concerns that SPD decision making about booking and  
03:           arrests was turning upon detainee participation in  
04:           protests?

05:       A. Can you repeat that or rephrase that?

06:       Q. Yeah. Did Seattle Police Department become aware of  
07:           any allegations or concerns that officers were making  
08:           arrests and booking decisions for improper reasons,  
09:           particularly that non-violent protesters were  
10:           protesting?

11:       A. I wasn't aware of any of that.

12:       Q. (By Mr. Pence) Okay. Was the Seattle Police  
13:           Department aware of any of that?

14:       A. Not that I'm aware of.

15:       Q. And again, you're testifying as a 30 (b)(6) witness on  
16:           the issue of decisions, so -- how were the -- were  
17:           Seattle Police Department decisions with respect to  
18:           arrests and bookings addressed at Jail Administrative  
19:           Group meetings, JAG meetings?

20:                   MS. COWART: Objection. Scope.

21:       A. I'm not aware of that.

22:       Q. (By Mr. Pence) So you're not aware of SPD officers or  
23:           command staff attending JAG meetings at any point prior  
24:           to January 1st, 2021?

25:                   MS. COWART: Objection. Scope.

0075

01: A. That wasn't part of my duty at the time. I was not  
02: involved in that.

03: Q. (By Mr. Pence) Ms. Aagard, I'm not asking in your  
04: personal capacity. I'm asking you as the witness  
05: designated to respond to questions about decision  
06: making in 2020.

07: MS. COWART: It's Captain Aagard.

08: Q. (By Mr. Pence) So, Captain Aagard, you're the designee  
09: to testify about SPD's decision making. I'm asking if  
10: SPD's decision making was addressed at any JAG meetings  
11: in 2020 prior to my clients' arrests?

12: A. I don't know. I was not there. I can only testify  
13: truthfully to things I'm aware of, so I cannot answer  
14: that because I -- I am being honest.

15: MS. COWART: And I'll renew my objection as to  
16: scope in terms of what was discussed at JAG meetings or  
17: not discussed.

18: Q. (By Mr. Pence) Did you make any effort to determine  
19: what was discussed at JAG meetings regarding SPD's  
20: decision making about Topic 1?

21: MS. COWART: Objection. Scope.

22: A. No.

23: Q. (By Mr. Pence) Did SPD treat the restrictions as  
24: binding on SPD's decision making with respect to Topic  
25: 1?

0076

01: A. No.

02: Q. Did it treat it as voluntarily?

03: A. No.

04: Q. Did it comply with them?

05: A. Did it what?

06: Q. Did SPD comply with the restrictions?

07: A. Yes.

08: Q. Are there any known instances in which the Seattle

09: Police Department did not comply with the booking

10: restrictions up through January 1st, 2021?

11: A. Not that I know of.

12: Q. Did plaintiffs' bookings comply with the booking

13: restrictions?

14: MS. COWART: Objection. Scope. Calls for

15: speculation. Personal knowledge. You can answer.

16: MR. PENCE: It's a totally specious objection.

17: 1 (b) says the connection, if any, between this topic

18: and arrests and bookings of plaintiffs at issue.

19: A. I didn't read the arrest report.

20: Q. (By Mr. Pence) Okay. Would you like to read the

21: arrest report in order to answer that question?

22: MS. COWART: Objection. Scope. Because she's

23: already testified that there's not a connection, that

24: they weren't arrested at a large protest.

25: Q. All right. Do you see Exhibit 13 on your screen?

0077

01: A. Yeah.

02: MS. COWART: It's a little small.

03: A. Yeah.

04: Q. (By Mr. Pence) The three-page exhibit previously

05: marked --

06: A. Do you have the booking sheet? That would be a lot

07: easier and quicker to see what the jail read.

08: Q. Your counsel hasn't provided that to us. We're

09: referring to SPD decision making in any event. This is

10: plaintiffs' Exhibit 13. Would you please take your

11: time and read this document -- this --

12: A. I can't scroll down. Is this the start of it right

13: here?

14: MS. COWART: So we can only see a chunk.

15: MR. PENCE: There's the top.

16: Q. (By Mr. Pence) The narrative is the part that I'm

17: interested in you reading.

18: A. The -- I need to move these over a little more. Okay.

19: Q. I'm going to scroll down to the second page. It's got

20: the language of the ordinance. So it goes on to Number

21: 2 up here. Just a couple more paragraphs. Go ahead.

22: A. Okay. Any more?

23: Q. No. That's -- that's essentially the statement. So --

24: A. Ask me your question again.

25: Q. Yeah. Did plaintiffs' bookings into jail under these

0078

01: facts comply with the booking restrictions as far as

02: the City of Seattle is concerned?

03: A. Yes.

04: Q. How?

05: MS. COWART: Objection. Scope. You can

06: answer.

07: A. Well, several reasons. Just from looking at this and

08: not the footage, they were doing what fits the -- fits

09: the SMC for property damage. They were repeat

10: offenders. They had other previous times been arrested

11: for obstructing and failure to disperse. Those are the

12: first two.

13: And then if you look at the totality of the

14: circumstances and what the east precinct has been

15: dealing with up there, crowds have been trying to burn

16: the precinct down, hindering the operations of the

17: precinct, harassing the officers.

18: It says here that it was live streamed, meaning

19: that by live streaming this incident, situations like

20: that can escalate quickly. Others join in, the crowd

21: gets bigger, so there is a danger to an ongoing

22: incident here where officers can be in fear of being

23: assaulted, more damage to the precinct.

24: There's apartment buildings right there, right

25: above and beside the precinct that would be in danger

**Pl's Obj.:  
Personal  
knowledge, FRE  
602.**

0079

01: if anything happened to the precinct. People having  
02: dinner, if the crowds got bigger. So there's an  
03: ongoing danger to the community and the officers and  
04: the operations of the precinct.

05: Q. So writing peaceful protests created an ongoing danger  
06: to the community and the precinct?

07: MS. COWART: Objection. Scope. You can  
08: answer.

09: A. Yes, for the facts that I just stated.

10: Q. (By Mr. Pence) How did SPD implement the booking  
11: restrictions?

12: MS. COWART: Objection. Outside the scope.  
13: You can answer.

14: A. So they were booking restrictions by the jail, not by  
15: SPD.

16: Q. (By Mr. Pence) Right. And you said you honored them;  
17: you complied with them. How did you comply with them?

18: A. We --

19: MS. COWART: Objection. Outside the scope.  
20: You can answer.

21: A. If it was a non-violent misdemeanor and there was no  
22: extenuating circumstances, we could screen it with the  
23: jail and they would say yes or no.

24: Q. (By Mr. Pence) So my question is specifically about  
25: how staff were -- so officers and supervisors are the



0080

01: ones who were making this decision to present people to  
02: the jail, correct? Outside of -- outside of large  
03: crowd events, correct?

04: A. Correct.

05: Q. So how are those individuals, those officers and  
06: supervisors, made aware of the booking restrictions?

07: MS. COWART: Objection. Scope. You can  
08: answer.

09: A. There were e-mails, memos passed down to patrol that  
10: were given to the officers and the sergeants and  
11: discussed.

12: Q. (By Mr. Pence) Have you reviewed those in preparation  
13: for this deposition?

14: A. Yes. I've seen some of them, maybe not all of them.

15: MR. PENCE: I haven't received those. I would  
16: make a formal request --

17: (Request for Information Made.)

18: MS. COWART: No worries. Later.

19: MR. PENCE: -- for defendants to provide the  
20: e-mails and memos that were used to communicate the  
21: booking restrictions to its officers and supervisors.

22: Q. (By Mr. Pence) Were officers and supervisors given a  
23: copy of Exhibit -- I've forgotten already -- I guess  
24: this is 13. Yeah. I'm sorry, not 13. Excuse me.

25: Strike that.

0081

01: Were officers given a copy of the Diaz memo, the  
02: booking restrictions memo, Exhibit 2?

03: MS. COWART: Objection. Scope. You can  
04: answer.

05: A. I'm unsure if they were given a copy of that particular  
06: memo.

07: Q. (By Mr. Pence) Were officers and sergeants given any  
08: sort of instruction regarding the purpose of the  
09: restrictions?

10: MS. COWART: Objection. Scope. You can  
11: answer.

12: A. The booking restrictions were communicated and I was  
13: aware of it. I'm assuming other people knew why as  
14: well.

15: Q. (By Mr. Pence) So but specifically the purpose being a  
16: health measure to prevent the spread of Covid-19, was  
17: that communicated to officers and sergeants to your  
18: knowledge?

19: A. Yes.

**Pl's Obj.:  
Personal  
knowledge, FRE  
602.**

20: Q. And were officers given any instruction regarding how  
21: to make booking referral decisions given the  
22: restrictions?

23: MS. COWART: Objection. Scope. You can  
24: answer.

25: A. They were given the list that non -- that still

0082

01: qualified for booking that were non-violent  
02: misdemeanors and told that outside of those, it would  
03: be a case-by-case basis, which you would have to screen  
04: with the jail.

05: Q. (By Mr. Pence) And what were they told about the  
06: case-by-case basis criteria that they would need to --  
07: what were they told they needed to tell the jail in  
08: order to get a booking that didn't qualify under the  
09: restrictions?

10: A. It would have been a case-by-case basis and there would  
11: have to be extenuating circumstances, an ongoing threat  
12: to the public, the community, repeat offenders,  
13: totality of the circumstances surrounding the arrest.

14: Q. Were officers instructed to change their practices with  
15: respect to arrests or booking in any way in response to  
16: the restrictions?

17: MS. COWART: Objection. Scope. You can  
18: answer.

19: A. If they screened an arrest with the jail and the jail  
20: declined to take them, then they would investigate and  
21: release the subject, if the jail would refuse to take  
22: them.

23: Q. (By Mr. Pence) Okay. I guess I'm saying before the  
24: decision was made to present them to the jail for  
25: booking before the refusal would happen, if any, were

0083

01: officers under instructions from SPD to make -- to  
02: change their decision making at all about arrests or  
03: bookings given the restrictions?

04: MS. COWART: Objection. Confusing. Compound.  
05: So you can answer.

06: A. I can give you an example. If an officer had an arrest  
07: for a shoplifter, misdemeanor shoplifter, during this  
08: time with the restrictions and there was no extenuating  
09: circumstances with that shoplifter, no warrants, no  
10: ongoing threat to the community, then they would  
11: investigate and release that subject. They wouldn't  
12: screen those with the jail.

13: Q. (By Mr. Pence) Was there an instruction to SPD  
14: officers to simply do less policing during 2020 leading  
15: up to January 1st, 2021?

16: MS. COWART: Objection. Scope. Vague. You  
17: can answer.

18: A. No.

19: Q. (By Mr. Pence) So were officers arresting people at  
20: the same rate during that period of time than they were  
21: prior like in the year before, for example?

22: MS. COWART: Objection. Scope. You can  
23: answer.

24: A. I would have to look at data to know that for sure.

25: Q. (By Mr. Pence) I'm trying to understand how it is that

0084

01: the jail population dropped substantially during this  
02: period of time and how SPD participated in that drop.  
03: So I guess my question is: To your knowledge with  
04: respect to SPD decision making for booking and arrests,  
05: how did SPD accomplish the reduction in the number of  
06: people it's referring to the jail, or did it? Was SPD  
07: referring the exact same number of people approximately  
08: as it was in years before?

09: MS. COWART: Objection. Scope. Compound.  
10: Confusing. You can answer.

11: A. I think one of the factors that reduced the King County  
12: Jail population was the DOC warrants. They were  
13: deferred to SCORE jail. We could no longer book DOC  
14: warrants into the King County Jail. We had to take  
15: them to the SCORE jail. That would have been a  
16: substantial amount of arrestees.

17: Q. (By Mr. Pence) Anything else like that that would  
18: structurally change the number of people SPD was  
19: bringing into the jail?

20: MS. COWART: Objection. Scope. You can  
21: answer.

22: A. Like the example I used before, a shoplift, they were  
23: I&R'd, if there was no other extenuating circumstances  
24: or ongoing threat to the community.

25: Q. (By Mr. Pence) So if I were to present to you the

0085

01: claim that there were approximately 500 people arrested  
02: and booked into jail by SPD during large crowd events  
03: in 2020, the vast majority of whom were arrested for  
04: offenses that are not eligible for booking based off  
05: the offense into the King County Jail, is it your  
06: testimony that in all of those circumstances, there are  
07: extenuating circumstances related to ongoing threat to  
08: the community or to public safety or to significant  
09: property damage that justifies those bookings?

10: MS. COWART: Objection. Confusing. Compound.  
11: Scope. You can answer.

12: A. When I was doing the prisoner processing, they were  
13: all -- they all met the criteria for ongoing threat to  
14: the community, repeat offenders, with totality of  
15: circumstances. I can't testify to all of them without  
16: looking at each individual booking sheet.

17: Q. (By Mr. Pence) And that's your testimony as the City's  
18: 30 (b)(6) designee on this topic, correct?

19: A. Yes.

20: Q. All right. I'm going to go back to Exhibit 2, I  
21: believe, the booking restrictions. Do you see that on  
22: your screen?

23: A. Yes.

24: Q. All right. I'm going to go down to the section below,  
25: which is what you have been alluding to. "Please note

0086

01: we have provided an avenue that would allow our shift  
02: captains the authority to work with your agency on  
03: specific recommendations regarding an individual  
04: booking." Do you see that language?

05: A. Yes.

06: Q. Is this the case-by-case avenue you were referring to  
07: before about how someone who was not arrested for an  
08: eligible offense might be booked?

09: A. That's one of them. Another memo states case by case,  
10: but that has the same flavor as the other one, but it  
11: was a different memo.

12: Q. So what is the City's understanding what this language  
13: means?

14: MS. COWART: Objection. Scope. Personal  
15: knowledge. You can answer.

16: Q. (By Mr. Pence) As it pertains to City decision making  
17: in Topic 1, what is the City's understanding of what  
18: that language means?

19: A. The paragraph where it says "Please note that we have  
20: provided an avenue to allow our shift captains..."

21: Q. Yes.

22: A. I dealt with the jail. I would call over to screen the  
23: arrests. I don't know if it was always shift captains  
24: or what that definition of a shift captain is over  
25: there. Sometimes it was delegated to the -- another

0087

01: individual that was acting as a shift captain and they  
02: would screen the arrest with us. That's what it means  
03: to me is that I would screen it with their version of a  
04: shift captain when we made arrests.

05: Q. Yeah. It sounds like you're talking about the  
06: logistics of how this worked, and I appreciate that.  
07: We're going to get to that, but is it true that this  
08: avenue that Director Diaz is referring to is  
09: essentially a way for the City to book someone who has  
10: not committed a qualifying offense?

11: A. A qualifying offense, that is a case-by-case basis. We  
12: don't try to screen calls that we know do not fit the  
13: protocols.

14: Q. I'm not trying to be tricky here. This right up here  
15: says "Jails will not accept people brought in for  
16: misdemeanor charges except for the following." When I  
17: say qualifying offense, I'm referring to this list of  
18: offenses that says -- that exclusively will not accept  
19: people.

20: So that's what I mean when I say, if they're not on  
21: this list, you don't qualify. So down here it says  
22: This is a way you can do a booking that for an offense  
23: that's not listed. That's what I'm asking about.

24: Is that your understanding that this language here  
25: essentially allows the City to do a booking outside of



0088

01: this list? And I know the list changed a little bit.

02: There were gun offenses and other misdemeanors added on

03: a few weeks after this. So this is not a complete

04: list, but there is a list.

05: You can either qualify for booking because

06: easy-peasy, you were arrested for an offense on the

07: list. And if not, there's this alternative avenue.

08: That's my question. Does the City understand this is

09: essentially a way for you to book someone for an

10: offense that's not on the list?

11: A. If we can say they're an immediate risk to the public

12: safety, then the jail can either accept that or deny

13: it. It was always up to the jail, though, not SPD.

14: Q. All right.

15: MS. COWART: Is this a good time for another

16: quick break?

17: MR. PENCE: I would like to keep going for a

18: few more minutes if we can, and then I think we would

19: be happy to take a break. Yeah. Is that okay?

20: MS. COWART: The only issue is I need to

21: get -- I need to plug in my laptop.

22: MR. PENCE: You need to plug in your laptop?

23: MS. COWARD: How long -- how much longer do

24: you want to go before we have a break? Because I have

25: to --

0089

01: MR. PENCE: I'm going to be done by 4:00

02: today.

03: MS. COWART: Okay. Can we take a five-minute

04: break just so I can plug in my laptop? But if you want

05: to ask a few more questions, that's totally fine. But

06: if my laptop dies, then I'll be gone. Then we'll have

07: to break.

08: MR. PENCE: Definitely we can take a break in

09: a couple minutes.

10: MS. COWART: Okay.

11: Q. (By Mr. Pence) So if I understood your testimony

12: regarding Exhibit 2 about the avenue, the way that

13: would work would be the booking sergeant would call

14: somebody over -- the sergeant -- the officer would

15: refer the matter to the sergeant and the sergeant would

16: call over to the jail or the person in your capacity

17: would call over to the jail and make representations

18: regarding public safety to the jail, who would then

19: either accept those or not and allow for an exception

20: to the booking restrictions; is that right?

21: A. If there was an immediate risk to public safety, yes.

22: Q. If SPD represented that to the jail?

23: A. If we articulated the facts of the case.

24: Q. Are there any magic words SPD would have to say to

25: articulate a public safety concern?

0090

01: A. No.

02: Q. Are you aware of any times in which Seattle Police **Pl's Obj.:Personal**  
**knowledge, FRE 602.**

03: Department said, This person represents a public safety

04: concern, we need them booked, and the jail said no?

05: A. We would always articulate the facts in the case

06: surrounding the arrest. We wouldn't just say "public

07: safety concern." We would have to articulate the facts

08: in each case.

09: Q. Right. Are you aware of any times in which SPD made

10: those claims and the King County Jail said no, that's

11: not sufficient to constitute a public safety exception

12: to the restrictions?

13: A. There were some times when they articulated they were

14: so short with staffing, it wasn't that -- it wasn't

15: just the facts. They were taking into account also

16: their staffing.

17: Q. So when did that occur?

18: A. I don't -- I can't -- I do not know the exact moment I

19: had that conversation.

20: Q. Approximately when did that occur?

21: A. Somewhere of 2020.

22: Q. Okay. Approximately how many occasions did that occur?

23: A. And you're asking just for the large crowd events,

24: correct?

25: Q. Let's start with that, yes.

0091

01: A. I -- I wouldn't be able to give you a number on the

02: exact amount. It was three years ago.

03: Q. Okay. So how about an approximate number?

04: A. I really don't know.

05: Q. So anywhere between -- so can you couch it for me,

06: somewhere between 100 times and zero times? Is there

07: any range you can give that you would be comfortable

08: with?

09: A. It would -- it would have been around 5-ish. It's a

10: very broad number. I just know it -- sometimes their

11: staffing was so low that it did affect the bookings.

12: Q. All right.

13: MR. PENCE: Let's -- Kerala, did you get the

14: plug in? Is that what you were doing there for a

15: second?

16: MS. COWART: I got the plug in. I still would

17: like a restroom break, but it's not as urgent as having

18: to plug in, so --

19: MR. PENCE: Let's go ahead and take a break.

20: Five minutes. 3:17, please. Thank you.

21: THE VIDEOGRAPHER: Okay. Off the record at

22: 3:12 p.m.

23: (Recess taken.)

24: THE VIDEOGRAPHER: Back on the record at 3:20

25: p.m.

0092

01: MR. PENCE: A little longer than five minutes.

02: Hopefully we'll get through with this before 4:00.

03: Q. (By Mr. Pence) So the term "protestor exception" has

04: been kicking around this case. Sometimes it's referred

05: to in deposition testimony. It's been referred to in

06: the pleadings. What does that term mean to the City

07: with respect to the Topic 1?

08: A. There's no protestor exception for bookings into the

09: King County jail.

10: Q. We have discovery responses and deposition testimony

11: indicating that on occasion during 2020 Seattle Police

12: Department would reach out to the jail in advance of

13: large protest events to accommodate booking protestors

14: for offenses that did not qualify under the

15: restrictions. Is that a protester exception?

16: A. No.

17: Q. What is that?

18: MS. COWART: Objection. Vague. Vague.

19: Scope. You can answer.

20: A. So when we make arrests at large crowd demonstrations,

21: we are -- our objective is to facilitate people's right

22: to express their First Amendment right, freedom of

23: speech. We don't -- we try to deter from making any

24: arrests. The only arrests we make are targeted

25: arrests.

Pl's Obj:  
Relevance,  
confusion, waste of  
time FRE 401-403.

0093

01:                   So when we make a targeted arrest, it's for  
02:                   something that is either significant property damage or  
03:                   is endangering the public or the people -- the  
04:                   protesters themselves or bystanders. So when we make  
05:                   an arrest, it's targeted. So almost all of those fit  
06:                   the booking protocols.

07:           Q. My question was about the practice of SPD reaching out  
08:           to the jail in advance of large protest events. Is  
09:           that true that that occurred?

10:           A. Is that what?

11:           Q. Did that occur?

12:           A. Yes.

13:           Q. So you're not doing that in response to any specific  
14:           event or specific property damage or endangering the  
15:           public or anyone because you're doing it before it's  
16:           happened. So my question is whether or not -- what do  
17:           you call the practice of reaching out to the jail in  
18:           advance of a protest in order to get authority to book?

19:           A. I did -- I was the one that reached out to the jail a  
20:           lot of the time. And the reason I did that was more of  
21:           a courtesy to the jail to let them know we have this  
22:           big event and we're letting you know that we may have  
23:           several people that we're going to bring in to book.  
24:           So it was more of a courtesy to let them know and to be  
25:           prepared.

0094

01: Q. And what did the King County Jail say to you in  
02: response when you reached out in advance of these  
03: protests?

04: A. When I was talking to them it was mainly letting them  
05: know, so they would say thank you for letting us know.  
06: And I have had conversations when I've called over  
07: there to the King County Jail. And one night I was  
08: talking to one of the booking commanders there and he  
09: told me specifically that if any of the arrests do not  
10: fit the non-violent or the violent misdemeanor, so it's  
11: a non-violent misdemeanor, if you have any of those and  
12: they're an ongoing threat to the community, we will  
13: still take those. So he told me that that would fit  
14: the case-by-case screening basis.

15: Q. So prior to any particular arrest or any factors  
16: arising, you would get preauthorization from the King  
17: County Jail about -- for booking of protesters who met  
18: that exception?

19: A. Preauthorization to know that they had staffing and  
20: letting them know that there's going to be bookings and  
21: that we may be screening on a case-by-case basis for  
22: potential non-violent misdemeanors that were an ongoing  
23: threat to the community.

24: Q. Where would officers have gotten the impression that  
25: there was a protester exception to the booking

D's Obj: 403 (mischaracterizes  
earlier testimony),  
602, Outside Scope of 30(b)(6)

0095

01: restrictions?

02: MS. COWART: Objection. Scope. You can

03: answer.

04: A. I think those in patrol that weren't working a lot of

05: the large crowd demonstrations that were not hearing

06: the roll call and reading the IAPs may have in their

07: world and their daily workup, like at each precinct

08: when they're working second or third watch, they may

09: casually think that. But it was never what -- that was

10: never discussed or determined by anyone outside that

11: there was a protester exception.

12: Q. How would SPD have intervened in order to correct that

13: misunderstanding that officers and patrol may have

14: developed, like --

15: A. We didn't --

16: Q. -- was there a training or instruction or oversight

17: that would have corrected officers misunderstanding

18: about the existence of a protest or booking exception?

19: MS. COWART: Objection. Scope. You can

20: answer.

21: A. There was the memo that was given out that said it was

22: a case-by-case basis. So maybe they would have gotten

23: it confused by that, but there was not -- the thought

24: wasn't there that people were confused or that people

25: on patrol were -- thought that there was a protestor



0096

01: exception. I had never heard that until I read  
02: Sergeant Kennard's testimony.  
03: Q. (By Mr. Pence) I'm going to share with you previously  
04: marked Exhibit 21. This is an October 8th e-mail  
05: string between Caedmon Cahill and public defenders and  
06: some folks from the King County -- yeah, I guess these  
07: are King County public defenders and other folks in the  
08: Seattle city government.  
09: This includes a response from Mr. David Montes to  
10: Ms. Cahill responding in line to some questions that  
11: Ms. Cahill posed, including a concern I guess by Ms.  
12: Cahill, who you had previously identified as an Office  
13: of Civil Rights employee, that SPD filings/practices  
14: that appear to try and evade the booking restrictions.  
15: Mr. Montes responds with information -- his  
16: perspective on it, including the sentence "In protest  
17: cases especially, they have gotten the jail to book  
18: people on misdemeanors."  
19: And this goes on. So this is October 8th, 2020.  
20: To your knowledge, as the City's 30 (b)(6) witness  
21: regarding SPD decision making, did this ever come to  
22: your attention? Did you ever become aware of a concern  
23: by the public defenders and other folks who actually  
24: within the City -- the City's Office of Civil Rights  
25: were concerned that SPD was circumventing the booking

0097

01: restrictions in order to book people?

02: MS. COWART: Objection. Confusing as to you.

03: A. No, I wasn't aware of that.

04: Q. (By Mr. Pence) And you specifically as the City's 30

05: (b)(6) witness, are you aware of -- the City -- the

06: Seattle Police Department ever becoming aware of that

07: concern?

08: A. Only recently when I was reading over the material that

09: I received from my attorney.

10: Q. So the material you've reviewed in preparing for this

11: has let you know that SPD did have reason to know that

12: there was a concern about this prior to January 1st,

13: 2021?

14: MS. COWART: Objection. Assumes facts not in

15: evidence.

16: MR. PENCE: It's a question.

17: A. The memo I read was from the jail, not from SPD.

18: Q. (By Mr. Pence) The memo you read about concerns that

19: SPD was circumventing the booking restrictions was from

20: the county jail?

21: A. The one that I just read, it appeared it was from the

22: -- someone from the county jail, not SPD.

23: Q. The one I just showed you?

24: A. Yeah.

25: Q. No, it's not from the county jail. Okay. I'm not

0098

01: referring to Exhibit 21. Are you -- this -- as the  
02: City's 30 (b)(6) designee, are you aware of any basis  
03: that the City -- that SPD was aware of about a concern  
04: that officers were circumventing the booking  
05: restrictions to book protesters prior to January 1st,  
06: 2021?

07: A. Not specifically within SPD. I read some news articles  
08: that stated that, yes.

09: Q. When were the news articles published?

10: A. I would have to refer to it.

11: Q. What did SPD do, if anything, to change or investigate  
12: this concern?

13: A. We didn't change anything because we were already  
14: screening them on a case-by-case basis and we did not  
15: have a protester exception.

16: Q. Okay. When did SPD first become aware that the King  
17: County Jail had took the position that SPD was  
18: circumventing the booking restrictions?

19: MS. COWART: Objection. Mischaracterizes  
20: testimony. Assumes facts not in evidence. Scope. You  
21: can answer.

22: A. That doesn't make sense to me because we can't  
23: circumvent it. We screened it and it was up to the  
24: jail to accept it or not accept it.

25: Q. (By Mr. Pence) Did SPD ever become aware of John Diaz,

0099

01: the director of DAJD, having a complaint regarding the  
02: people who SPD was bringing to the jail to book?

03: A. I wasn't aware of that.

04: Q. And you -- that's your testimony as a 30 (b)(6)

05: designee, correct?

06: A. Yes.

07: Q. Is SPD aware of anything that DAJD Director John Diaz

08: did to alert, advise, or influence SPD's decision

09: making regarding booking during 2020?

10: MS. COWART: Objection. Scope and confusing

11: with respect to timing.

12: Q. (By Mr. Pence) You can answer.

13: A. Can you repeat that one more time, please?

14: Q. Yeah. What, if anything, is SPD aware of John Diaz

15: doing to complain about alert, advise, or influence

16: SPD's decision making about booking protesters during

17: large crowd events in 2020?

18: A. I wasn't aware of any complaints from John Diaz about

19: the bookings that they accepted.

20: Q. And that's your testimony as the CR 30 (b)(6) witness,

21: correct?

22: A. Correct.

23: Q. What is SPD's understanding about the Office of Civil

24: Rights concern about protester booking in 2020?

25: MS. COWART: Objection. Confusing with

0100

01:           respect to time and outside scope. You can answer.

02:       A. I wasn't aware of any at the time until I read the --

03:       the articles.

04:       Q. (By Mr. Pence) How would SPD make itself aware of a

05:       concern about this particular topic, the decision

06:       making regarding booking folks in 2020?

07:               MS. COWART: Objection. Confusing. You can

08:       answer.

09:       A. Yeah, that's confusing.

10:       Q. (By Mr. Pence) You're acknowledging that there was a

11:       concern, but you weren't aware of it. You're

12:       testifying about decision making, and I'm wondering

13:       what is the way that SPD should have become aware of

14:       that concern with respect to that topic?

15:               MS. COWART: Objection. Confusing. Scope.

16:       You can answer.

17:       A. From the public or from the news media or from the

18:       jail?

19:       Q. (By Mr. Pence) Any or all. If someone has a concern

20:       that SPD is circumventing the restrictions in order to

21:       book protesters, how would SPD become aware of that?

22:       If that's being discussed among Office of Civil Rights,

23:       there's complaints from the director of the jail,

24:       there's newspaper articles coming out about it.

25:               How should you as the City have become aware of

0101

01:           those concerns?

02:                       MS. COWART:  Objection.  Compound.  Confusing.

03:           Scope.  You can answer.

04:       A.  That would go through our Office of Professional

05:           Accountability and they would investigate it.

06:       Q.  (By Mr. Pence)  Was the Seattle Police Department aware

07:           during 2020 about community concerns that Seattle

08:           Police Department was making arrests and booking

09:           decisions in retaliation for free speech?

10:                       MS. COWART:  Objection.  Scope.  Vague.  You

11:           can answer.

12:       A.  I wasn't aware of that.

13:       Q.  (By Mr. Pence)  And you're testifying as a 30 (b)(6)

14:           witness?

15:       A.  Yes.

16:       Q.  So let's talk briefly about the factors that were

17:           authorized for officers and sergeants to rely on and to

18:           represent to the King County Jail in order to make

19:           booking recommendations that don't qualify under that

20:           list of offenses.

21:                       As I understand your testimony, those factors are

22:           significant property damage and endangering the public

23:           of an ongoing threat; is that correct?

24:                       MS. COWART:  Objection.  Confusing as to

25:           qualify.

0102

01: A. No, because significant property damage would be a  
02: felony and that would be bookable.

03: Q. (By Mr. Pence) Okay. So the only reason that someone  
04: should be being booked is endangering the public or the  
05: community through -- or officers to an ongoing threat?

06: A. There were many reasons case by case of why they would  
07: be booked, several reasons on a case-by-case basis, if  
08: it didn't meet the booking criteria that was specified.

09: Q. Well, your previous testimony on this topic has been  
10: repeated that the primary considerations were  
11: significant property damage and endangering the public  
12: of an ongoing threat or officers or other folks.

13: So I guess I'm wondering if someone doesn't pose a  
14: threat to -- an ongoing threat to the public, someone  
15: isn't carrying a weapon, isn't making assaultive  
16: statements, isn't -- hasn't done that in the past, I'm  
17: trying to understand why they would be booked.

18: So we have heard a little bit of testimony in this  
19: case about the concern about imposing consequences on  
20: people, that I guess if someone is chalking -- so for  
21: example, we're talking about sidewalk chalk, right?

22: Can we agree that sidewalk chalk doesn't present a  
23: threat to the public?

24: A. Well, just to be clear, I thought it said in the report  
25: charcoal. Was it charcoal or chalk?

0103

01: Q. One person wrote in charcoal, one person -- three  
02: people or two people wrote -- I don't know exactly.  
03: Honestly it's both charcoal or chalk, but is there a  
04: big difference to you in your mind between charcoal and  
05: chalk with respect to danger in the community?

06: MS. COWART: Objection. Scope. You can  
07: answer.

08: A. I would have to look at the totality of the  
09: circumstances in that case.

10: Q. (By Mr. Pence) Yeah. Well, you've read the report, so  
11: that's what I'm asking you about, the totality of the  
12: circumstances in that case. People writing in  
13: charcoal, let's talk about that first. Does someone  
14: writing the words "peaceful protest" in charcoal  
15: present a danger to officers?

16: MS. COWART: Objection. Scope. Speculation.  
17: Asked and answered. You can answer.

18: MR. PENCE: You can have a standing objection  
19: to all of those bases. The topic is whether -- like  
20: how those things apply to the rest of the plaintiffs.  
21: Your objection is noted for the record.

22: A. So I would have to --

23: Q. (By Mr. Pence) How does somebody writing in charcoal  
24: create a danger to an officer?

25: MS. COWART: Same objections.



0104

01: A. So in looking at the totality of the circumstances,  
02: they were repeat offenders, they were live streaming  
03: it, and hindering the operations of the east precinct.  
04: So the east precinct was a flash point. They had many  
05: things happen there, they had people firing fireworks  
06: into their building, they were hindering the access and  
07: egress of the precinct.

08: And the officers were in fear for their lives many  
09: times when they were trying to burn the precinct down  
10: and lock them inside, so --

11: Q. (By Mr. Pence) Is there anything about charcoal that  
12: gave officers concern for their lives?

13: A. Charcoal gave them the PC for the arrest. It was  
14: property damage.

15: Q. Okay. So did -- was the factors -- we're dealing with  
16: the decision making -- SPD's decision making for  
17: arrests and booking. Was -- was fear for their  
18: lives -- was fear for their lives a factor in the  
19: decision to arrest or book for my clients?

20: MS. COWART: Objection. Calls for  
21: speculation. Lack of personal knowledge. Outside the  
22: scope. You can answer.

23: A. It is looking at the totality of the circumstances. So	<b>Pl's Obj: Personal knowledge FRE 602.</b>
24: when they made the decision to book, there was an	
25: ongoing threat to the community and to the officers.	

0105

01: On that night they couldn't operate their precinct and  
02: come and go in their operations.

03: It hindered the operation of that police department  
04: for that night. And they were live streaming it,  
05: meaning many other protesters -- many other people can  
06: come down there, join it, block the roadways. It can  
07: escalate very fast in these kind of conditions.

08: Q. (By Mr. Pence) Okay. So I'm not trying to trick you  
09: or force you into a corner. I'm asking you about each  
10: of the pieces of the answer you've given me. You've  
11: said repeat offenders; we'll talk about that. You've  
12: said live streaming; we'll talk about that. You've  
13: said east precinct operations being hindered; we'll  
14: talk about that.

15: I'm trying to get a simple answer from you on  
16: whether or not a person writing in chalk or writing in  
17: charcoal made the officers fear for their lives; yes or  
18: no?

19: MS. COWART: Objection. Argumentative.  
20: Harassing.

21: Q. (By Mr. Pence) Go ahead and answer the question.

22: A. It's not a yes or no question. It's totality of the  
23: circumstances.

24: Q. Okay. And what I'm asking is the totality of the  
25: circumstances, is that factor of writing in chalk, does

0106

01: that raise a concern about -- like the officer safety,

02: does that make the officers fear for their lives?

03: A. It can.

04: Q. Do you have an opinion about whether that occurred in

05: this case?

06: MS. COWART: Objection. Outside the scope.

07: Asked and answered. Calls for speculation. You can

08: answer.

09: A. I think there was an ongoing feeling that they were a

10: threat to the safety of the officers in the surrounding

11: community, yes.

12: Q. (By Mr. Pence) All right. And they're repeat

13: offenders, so what does that mean? What -- what do you

14: have to do to qualify as a repeat offender in order to

15: get an exception to the book restriction?

16: MS. COWART: Objection. Mischaracterizes

17: testimony. Outside scope. You can answer.

18: A. That is part of the totality of the circumstances

19: showing that they have been arrested prior on charges

20: of obstructing or property damage surrounding

21: disturbances.

22: Q. (By Mr. Pence) So does it matter what you're arrested

23: for?

24: MS. COWART: Objection. Vague. Confusing.

25: A. I would say it would matter in obstructing or a failure

0107

01: to disperse or anything that creates a -- a threat to  
02: community safety would be different than like an  
03: isolated shoplifting incident ten years ago. Anything  
04: that would show an ongoing threat to the officers or  
05: the community.

06: Q. (By Mr. Pence) So Mr. Tucson was arrested first; he  
07: was writing "peaceful protest" in charcoal. No one was  
08: live streaming when Mr. Tucson was writing. He -- they  
09: started live streaming as soon as the officers ran out  
10: to take him into custody. So does live streaming  
11: really justify the decision to book or to arrest Mr.  
12: Tucson?

13: A. No --

14: MS. COWART: Objection. Scope.

15: A. No. It's still the totality of the circumstances. We  
16: look at everything surrounding that charcoal writing.  
17: It's the totality of circumstances.

18: Q. (By Mr. Pence) So did the totality of circumstances  
19: include like with respect to this concern about  
20: hindering the operations, that there are two different  
21: vehicle ports that could be accessed through that  
22: parking lot area, that there's another on the other the  
23: side of the building, and that officers would have had  
24: no problem entering or exiting the building from there?

25: MS. COWART: Objection. Scope. Assumes facts

D's Obj: 403 (confusion/  
mischaracterizes testimony);  
602, Outside Scope of 30(b)(6)

0108

01: not in evidence. You can answer.

02: A. In the past and that night, there is a concern that  
03: people gathering in a crowd and disrupting the area  
04: could hinder the operation of the east precinct by not  
05: allowing officers to get in and out of the building, or  
06: the Seattle Fire Department, when they have to come and  
07: treat people, arrestees in the holding cells. It  
08: creates a danger for them as well because they can't  
09: get medical aid.

10: Q. So is it the concern that it could hinder and that's  
11: what justifies the -- that's a factor in favor of  
12: arrest and booking?

13: MS. COWART: Objection. Scope. You can  
14: answer.

15: A. Yes, that is one piece of it.

16: Q. (By Mr. Pence) With respect to the live stream, would  
17: -- so live streaming, does the Seattle Police  
18: Department recognize that live streaming of police  
19: activity is a First Amendment protected activity?

20: A. Absolutely.

21: MS. COWART: Objection. Scope.

22: Q. (By Mr. Pence) But you're saying that that's a factor  
23: that also justifies arresting and booking people if the  
24: event is being live streamed. Can you help me  
25: understand that?

0109

01: A. Not specifically doing live stream, but the threat that  
02: a crowd may grow and become more volatile and have  
03: escalation, people joining in. Many factors, not just  
04: that they're live streaming, no.

05: Q. When officers did attempt to use the sally port off of  
06: Pine into the precinct, the crowd got out of the way.  
07: So how does that factor -- how did that factor affect  
08: SPD decision making on one -- January 1st, 2021?

09: MS. COWART: Objection. Scope. Personal  
10: knowledge. Calls for speculation.

11: A. If an officer is driving through a crowd, that creates  
12: a danger to that officer. We don't like to pull our  
13: patrol cars through crowds because in the past they  
14: have damaged them, they've jumped on them, they've  
15: broken out the windows. It's a danger for that officer  
16: to have to drive through a crowd.

17: Q. And none of those things occurred on this occasion; is  
18: that right?

19: A. I do not know.

20: Q. Was there a concern about the fact that my clients were  
21: -- would -- if they were just released would go back  
22: and continue chalking or writing in charcoal on the  
23: wall; is that part of the reason why they were booked?

24: MS. COWART: Objection. Scope. Personal  
25: knowledge. You can answer.

0110

01: A. I am not sure what they screened with the jail.

02: Q. (By Mr. Pence) So you haven't reviewed any deposition

03: transcripts in this case in which officers had said

04: that part of reason why they booked was because they

05: were concerned that there needed to be consequences for

06: writing in chalk and charcoal?

07: MS. COWART: Objection. Scope. You can

08: answer.

09: A. I would have to review that particular deposition.

10: Q. (By Mr. Pence) Is it the City of Seattle's position

11: there should be consequences for someone writing in

12: charcoal or chalk on public property?

13: MS. COWART: Objection. Scope. You can

14: answer.

15: A. Taking in all of the other factors, it's not something

16: that we would want to continue because it can escalate.

17: Q. (By Mr. Pence) What do you mean by that?

18: A. When crimes happen and they start out at a lower level,

19: crowd mentality is different than the normal -- the

20: normal day-to-day workings of, say, arresting a

21: shoplifter. When people get together in a crowd, they

22: feel anonymous and things can escalate to where they're

23: throwing fireworks or bottles or escalating to

24: significant property damage or assaults. It can

25: escalate quickly.

D's Obj: 403 (mischaracterizes underlying testimony and offers incomplete designation of witness' testimony), Outside Scope of 30(b)(6)

Pls Obj.: FRE 602, 701-703.

0111

01: Q. (By Mr. Pence) Does that logic apply to civil  
02: disobedience in which protesters are intentionally  
03: making violations of the law that are intended to  
04: deliver a political message that this escalatory  
05: concern you have applies even in that circumstance?

06: MS. COWART: Objection. Scope. Compound.  
07: Confusing. You can answer.

08: A. Yeah, that's a little confusing. We allow -- our goal  
09: and objective is to allow freedom of speech. And we  
10: target -- we make targeted arrests within those crowds  
11: on subjects that are not protesting peacefully; they  
12: may be hurting the other protesters. We try to remove  
13: those from the people that are protesting peacefully so  
14: we can facilitate free speech.

15: Q. How can you distinguish between someone who is -- like  
16: I guess this is maybe a better question: So does the  
17: Seattle Police Department recognize any sort of  
18: conflict of interest between the Seattle Police  
19: Department itself and protesters who are protesting  
20: against the police department in terms of making this  
21: judgment about whether someone is escalating or whether  
22: someone is a threat?

23: MS. COWART: Objection. Confusing and outside  
24: the scope. You can answer.

25: A. Yeah, I don't understand that question.



0112

01: Q. (By Mr. Pence) Does the City see any problem with SPD  
02: having discretion over whether to teach -- to impose  
03: consequences on protesters who are protesting SPD?  
04: A. We would treat it the same.

05: Q. As I understand it, Seattle Police Department claims to  
06: have a policy of not arresting or booking for people  
07: writing in chalk on the sidewalk.  
08: So my question is: Does -- do the factors that you  
09: talk about with respect to escalation or threat to the  
10: community apply to people writing in sidewalk chalk on  
11: the sidewalk?

D's Obj: 403 (question  
confusing; testimony unclear),  
Outside Scope of 30(b)(6)

Pl's Resp: Testimony goes  
to City's purported reason  
for arrest, relevant and not  
confusing under 401-403

12: MS. COWART: Objection. Scope. Confusing.  
13: You can answer.

14: A. It would depend on the circumstance. If they're a  
15: daycare and they're out in front of their daycare and  
16: they're, you know, five to ten years old and they're  
17: writing on the sidewalk with chalk, that's totally  
18: fine. If they're within a group and they're writing on  
19: the sidewalk, we would watch them more carefully.

20: Q. (By Mr. Pence) What do you mean by that? You watch --  
21: what do you mean by that, watch them more carefully?

Pl's Obj:  
Relevance, 401-403.

22: MS. COWART: Objection. Scope. You can  
23: answer.

24: A. When there's large crowd events, we monitor them to  
25: ensure the safety of the community.

0113

01: Q. (By Mr. Pence) So I guess that gets me back to my  
02: question about Derek Tucson's arrest. What about Derek  
03: Tucson writing "peaceful protest" on the temporary wall  
04: built across the sidewalk in front of the east precinct  
05: invoked a concern about public safety?

06: MS. COWART: Objection. Assumes facts not in  
07: evidence. Scope. Personal knowledge. You can answer.

08: A. Again, it's a totality of the circumstance, it's the  
09: hindering of the operations of the east precinct, it's  
10: the fear from prior acts that officers would be in  
11: danger, that it would escalate.

12: Q. (By Mr. Pence) So if there were a large group of  
13: preschoolers outside of the east precinct writing in  
14: chalk on the sidewalk, would you pay attention to them?

15: MS. COWART: Objection. Scope. You can  
16: answer.

17: A. No, I would probably call CPS because I don't think  
18: kids should be allowed alone out in front of the  
19: precinct writing in chalk on the sidewalk.

20: Q. (By Mr. Pence) Would you have concern about an  
21: escalation of violence or of property destruction or  
22: large crowd factors?

23: A. For little kids?

24: Q. Yeah.

25: A. No.

0114

01: Q. You -- so what is it about my clients that made them

02: different than a group of little kids?

03: MS. COWART: Objection. Calls for

04: speculation. Lack of personal knowledge. Outside the

05: scope. You can answer.

06: A. I don't know the totality of the circumstances of the

07: case you're referring to. I only read the -- the

08: report. I don't know what the totality of the

09: circumstances were, but I know that it was hindering

10: the operation of the east precinct.

11: Q. How do you know that?

12: MS. COWART: Objection. Scope. You can

13: answer.

14: A. The clerk is the one, I believe, that called, so he was

15: concerned. He was concerned for his safety. He's out

16: in the front of the building with the doors. He was

17: concerned enough to call it in. So he feared for his

18: safety.

19: Past practices of groups out in front of the

20: precinct over that past year escalated tremendously

21: into almost burning the precinct down, hinders the

22: egress and the getting in and out of the precinct. So

23: taking in the totality of the circumstances, I don't

24: know what the subjects were saying. I don't know if

25: they were yelling. I don't know if they were harassing

0115

01: the officers that were trying to come in and out.

02: I don't know the -- all of the facts in that case.

03: But the officers were in fear for their safety or they

04: wouldn't have called it in.

05: Q. I'm going to show you Exhibit 55. This is a video.

06: PL000581 Bates.

07: (Exhibit 55 marked for identification.)

08: (Video playing.)

09: Q. It's a 19-second video. Do you see that?

10: A. Yeah.

11: Q. Could you hear it?

12: A. I didn't hear what she said.

13: Q. Did you hear anything? Did you hear anything?

14: A. I heard her say something.

15: Q. I'll turn it up and see if you can hear it this time.

16: (Video playing.)

17: Q. Did you hear it that time?

18: A. Something with chalk.

19: Q. Yeah. I hear her saying "just borrowed your chalk."

20: A. I don't know whose chalk that is.

21: (Video playing.)

22: A. "I just borrowed your chalk." Yeah, I heard that.

23: Q. And she appears to have written I heart police in front

24: of the west precinct. I'll represent to you that the

25: chalk belongs to Daniel Clark, a person who was

0116

01: arrested by SPD for writing in caulk at the east  
02: precinct in December. This occurred in I think July  
03: 2020, something like that.

04: So I'm wondering, what it is about -- if there's  
05: anything about writing in chalk itself that the City  
06: would indicate puts officers in danger or makes them  
07: afraid for their lives?

08: MS. COWART: Objection. Scope. You can  
09: answer.

10: A. It's not just the writing in chalk. It's the actions  
11: and the verbals and the location that goes along with  
12: that writing in chalk. The west precinct was never  
13: under siege or in lockdown like the east precinct was.

14: Q. (By Mr. Pence) So does that mean that video -- so this  
15: is -- I don't think this one has been used before -- I  
16: think I'm going to call this one 56.

17: (Exhibit 56 marked for identification.)

18: Q. And this is Bates PL000165.

19: This is a video in March of 2021 at the west  
20: precinct with Lieutenant Brooks threatening enforcement  
21: action against people writing in chalk on the plaza  
22: here. Any concerns -- I mean, and he's threatening to  
23: arrest them for it in the same spot that the other  
24: officer wrote I love cops. Just wondering if you  
25: could -- I'll play it for you and you can listen to the

0117

01: whole thing if you want.

02: But my question is going to be about what sort of  
03: threats or concerns about escalation that chalk raises  
04: for the City. Would you like me to play it?

05: A. Yeah.

06: (Video playing.)

07: Q. So I don't hear Lieutenant Brooks saying anything about  
08: we're concerned that you're going to escalate or that  
09: more people are going to show up or you're going to  
10: somehow become assaultive. What would be the reason  
11: for SPD to be threatening enforcement action against  
12: peaceful protesters writing peaceful comments about  
13: SPD's past behavior in that location?

14: MS. COWART: Objection. Outside the scope.  
15: Calls for speculation. Lack of personal knowledge.  
16: You can answer.

17: A. I mean, I would have to see the whole -- or know of  
18: what happened earlier, what happened the night before,  
19: what was happening that day; where this crowd came  
20: from, what the crowd did prior to using chalk, what  
21: they were saying.

22: They're not going to express their fear of  
23: escalation to -- to the subjects. That's not something  
24: that we do because that would escalate it more. They  
25: were obviously concerned that something more may

0118

01:           happen. They did warn them. They didn't arrest them  
02:           right there for it. They warned them, so I don't know  
03:           what had happened prior.

04:       Q. Does SPD have any concern about officers escalating?

05:                   MS. COWART: Objection. Outside the scope.

06:           Vague. You can answer.

07:       A. Our whole department is about deescalation. That's  
08:           what the whole Force Review Board is about,  
09:           deescalation. And we are trained hours and hours and  
10:           hours on how to deescalate. So we get a lot of  
11:           training on that, so no, we wouldn't want officers to  
12:           escalate situations.

13:       Q. (By Mr. Pence) Is it the City's position that the  
14:           arrest of the Derek Tucson on January 1st was a  
15:           deescalation?

16:                   MS. COWART: Objection. Outside the scope.

17:           You can answer.

18:       A. No. Arrests are not classified as deescalation in  
19:           themselves.

20:       Q. (By Mr. Pence) So when making the decision to arrest  
21:           and book on January 1st, 2021, what efforts of  
22:           deescalation did the City undertake?

23:                   MS. COWART: Object to lack of personal

24:           knowledge. Calls for speculation. Outside the scope.

25:       A. I think to -- when you have a disturbance or a crowd

0119

01: and you release them from the precinct right back out  
02: into that demonstration or that crowd, that in itself  
03: can escalate the crowd.

04: So I wouldn't say arresting is deescalation, but  
05: releasing them right back out into the same situation  
06: that they were just taken from could escalate the crowd  
07: and promote the same behavior again that they were  
08: arrested for.

09: So by booking them, it takes them out of that area  
10: and -- in that way, it deescalates it.

11: MS. COWART: Braden, what is your timing  
12: looking like?

13: MR. PENCE: I'm good. I -- that was a great  
14: answer to end on. I don't have any questions.

15: Kerala, do you have any follow-up?

16: MS. COWART: No, I don't have any follow-up.

17: MR. PENCE: Okay. Let's go off the --  
18: whatever you have to do to wrap this up on the record,  
19: and then let's go off.

20: THE VIDEOGRAPHER: I'm sorry, take us off the  
21: record?

22: MR. PENCE: Yes.

23: THE VIDEOGRAPHER: Okay. This concludes the  
24: video-recorded deposition of Captain Aagard. Off the  
25: record at 4:07 p.m.



0120

01: MR. PENCE: I'm going to order.

02: THE REPORTER: Would you like a copy?

03: MS. COWART: Yes, we would.

04: (Signature reserved.)

05: (Deposition adjourned at 4:08 p.m.)

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01: C E R T I F I C A T E  
02: STATE OF WASHINGTON )

03: )  
04: COUNTY OF SNOHOMISH )

05: I, the undersigned Washington Certified Court  
Reporter, pursuant to RCW 5.28.010 authorized to administer  
06: oaths and affirmations in and for the State of Washington  
do hereby certify:

07:  
08: That the foregoing 30 (b)(6) DEPOSITION OF CITY OF  
SEATTLE DESIGNEE LORI AAGARD was taken before me and  
completed on January 29, 2024, and thereafter was  
09: transcribed under my direction; that the deposition is a  
full, true and complete transcript of the testimony of said  
10: witness, including all questions, answers, objections,  
motions and exceptions;

11:  
12: That the witness, before examination, was by me  
duly sworn to testify the truth, the whole truth, and  
nothing but the truth, and that the witness reserved the  
13: right of signature;

14: That I am not a relative, employee, attorney or  
counsel of any party to this action or relative or employee  
15: of any such attorney or counsel and that I am not  
financially interested in the said action or the outcome  
16: thereof;

17: That I am herewith securely sealing the said  
deposition and promptly delivering the same to Attorney  
18: BRADEN PENCE.

19: IN WITNESS WHEREOF, I have hereunto set my hand  
this 5th day of February 2024.

20:

21:

22:

23: Kim Scheuerman, CCR

WA CCR. No. 2517

24: Washington State Certified Court Reporter

Residing at Edmonds, Washington.

25:

0122

01: E R R A T A S H E E T

02: CASE: TUCSON vs CITY OF SEATTLE

CASE NO.: 2:23-cv-00017-MJP

03: NAME OF WITNESS: LORI AAGARD

DATE TAKEN: 01/29/2024

04:

05: Please make all changes or corrections on this sheet.

If there are none, please write "NONE" across this sheet.

06: Please sign and date this sheet and the declaration.

Please do not mark the transcript. Thank you.

07:

08: PAGE # LINE # CHANGE/CORRECTION & REASON

09: \_\_\_\_\_

10: \_\_\_\_\_

11: \_\_\_\_\_

12: \_\_\_\_\_

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21: \_\_\_\_\_

22: EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_,

23: 20\_\_\_\_\_, at \_\_\_\_\_ (City), \_\_\_\_\_ (State).

24: \_\_\_\_\_

25: LORI AAGARD

0123

01: CASE: TUCSON vs CITY OF SEATTLE

CASE NO.: 2:23-cv-00017-MJP

02: NAME OF WITNESS: LORI AAGARD

DATE TAKEN: 01/29/2024

03:

04: I, LORI AAGARD, do hereby declare under

05: penalty of perjury that I have read the foregoing

06: transcript of my deposition; that I have made such

07: changes/corrections as noted herein, in ink, initialled

08: by me or attached hereto; that my testimony contained

09: herein, as corrected, is true and correct.

10: EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_,

11: 20\_\_\_\_\_, at \_\_\_\_\_ (City), \_\_\_\_\_ (State).

12:

13: \_\_\_\_\_  
LORI AAGARD

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